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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2020–0809]

14 CFR Parts 61, 63, 65, 67, and 107

Amended Prompt Settlement Policy for Legal Enforcement Actions Involving Medical Certificate-Related Fraud, Intentional Falsification, Reproduction, or Alteration

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notification of enforcement policy.

SUMMARY: The FAA is amending its policy for the prompt settlement of legal enforcement actions against individuals who the FAA has found violated regulations prohibiting any fraudulent or intentionally false statement on an application for a medical certificate or other document used to show compliance with any requirement for a medical certificate; reproduction of a medical certificate for fraudulent purposes; or alteration of a medical certificate. Revocation of all airman, ground instructor, and medical certificates is the appropriate sanction for such violations, and FAA regulations prohibit application for a new airman or ground instructor certificate for one year following the effective date of the order of revocation unless the order provides otherwise. The previous version of this policy allowed eligible individuals the opportunity to promptly receive an emergency order of revocation and, thereby, apply for a new airman or ground instructor certificate sooner than in the absence of that policy; however, that policy required a one-year wait period from the effective date of the order before an individual could apply for a new certificate. This amended policy will still ensure that eligible individuals promptly receive an emergency order of revocation, but the order will allow them the opportunity to apply for a new airman or ground instructor certificate after nine months from the effective date of the order.

DATES: This notification of enforcement policy is effective January 31, 2022.

FOR FURTHER INFORMATION CONTACT: James Barry, Manager, Policy/Audit/Evaluation, Enforcement Division, AGC–300, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8198; *james.barry@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2020, the FAA's prompt settlement policy (2020 PSP) relating to violations of 14 CFR 67.403(a)(1) through (4) [1] went into effect.[2] Under the 2020 PSP, an individual subject to legal enforcement action based on a violation 14 CFR 67.403 had the opportunity to enter into a settlement agreement providing for the prompt issuance of an emergency order revoking the individual's airman, ground instructor, and medical certificates. The prompt issuance of the order afforded eligible individuals the opportunity to apply for a new airman certificate under 14 CFR parts 61, 63, and 65, or a new ground instructor certificate under 14 CFR part 61, sooner than in the absence of such a policy.[3]

The 2020 PSP noted that the revocation of all airman, ground instructor, and medical certificates is the appropriate sanction for violations of 14 CFR 67.403(a)(1) through (4).[4] It also explained that the period between the discovery of an apparent violation of 14 CFR 67.403(a)(1) through (4) and, if appropriate, the issuance of an order revoking airman, ground instructor, and medical certificates can be lengthy. In this regard, the 2020 PSP stated that the timing between the FAA's discovery of an apparent violation of 14 CFR 67.403(a)(1) through (4) and the issuance of an order of revocation is affected by the time required to complete a full investigation and multi-tiered case review. In addition, the 2020 PSP noted that 14 CFR parts 61, 63, and 65 prohibit individuals whose airman and ground instructor certificates have been revoked from applying for new airman and ground instructor certificates for one year following the effective date of an order of revocation unless the order provides otherwise.[5] The 2020 PSP provided that individuals would still be subject to the one-year post-revocation bar for applications for new airman or ground instructor certificates but would have the opportunity to apply for such certificates sooner than without the policy because much of the investigation and case review process would be abbreviated or eliminated.

The amendment to the 2020 PSP announced in this document will afford eligible individuals who the FAA has found violated 14 CFR 67.403(a)(1) through (4) the opportunity to promptly receive an emergency order revoking any airman, ground instructor, and medical certificate they hold and to apply for a new 14 CFR part 61, 63, or 65 certificate after nine months from the effective date of the order.[6] Not only

[1] Under 14 CFR 67.403(a)(1) through (4), a person is prohibited from making or causing to be made: (1) A fraudulent or intentionally false statement on any application for a medical certificate or on a request for any Authorization for Special Issuance of a Medical Certificate (Authorization) or Statement of Demonstrated Ability (SODA); (2) a fraudulent or intentionally false entry in any logbook, record, or report that is kept, made, or used to show compliance with any requirement for any medical certificate or for any Authorization or SODA; (3) a reproduction, for fraudulent purposes, of any medical certificate; or (4) an alteration of any medical certificate.

[2] Settlement Policy for Legal Enforcement Actions Involving Medical Certificate-Related Fraud, Intentional Falsification, Reproduction, or Alteration, 85 FR 60057 (Sept. 24, 2020).

[3] Individuals were eligible for the 2020 PSP when there was no question about their qualification to hold a part 61, 63, or 65 certificate other than that presented by the 14 CFR 67.403(a)(1) through (4) violation and when they had no previous violations of 14 CFR 67.403(a)(1) through (4).

[4] Under 14 CFR 67.403(b)(1) and (2), a violation of 14 CFR 67.403(a)(1) through (4) is a basis for suspending or revoking all airman, ground instructor, and medical certificates and ratings held by the violator and withdrawing all Authorizations or SODA's held by the violator. *See also* FAA Order 2150.3C, chap. 9, para. 8 (certificate revocation is appropriate for a violation of 14 CFR 67.403(a)(1) through (4) since such a violation demonstrates a lack of qualification to hold a certificate).

[5] *See* 14 CFR 61.13(d)(2), 63.11(d), and 65.11(d)(1) and (2). The one-year application restriction applicable to revoked 14 CFR parts 61, 63, and 65 certificates does not apply to certificates issued under 14 CFR part 67 or 107.

[6] If a certificate revoked by the order was issued under: (1) 14 CFR part 61, the waiting period will apply to all certificates issued under 14 CFR part 61; (2) 14 CFR part 63, the waiting period will apply to the kind of part 63 certificate revoked; (3) 14 CFR

Continued

will this amendment reduce the one-year post-revocation bar related to the application for new 14 CFR part 61, 63, or 65 certificates to nine months, it will continue the 2020 PSP's features of promptness in issuing emergency orders and predictability associated with settlement agreements.

Like the 2020 PSP, this amended policy will also apply when any controlled substance conviction or motor vehicle action that is the basis for a violation of 14 CFR 61.15(a), (d), or (e) also forms the basis for an intentional falsification violation under 14 CFR 67.403(a)(1).[7] For example, the policy will apply to (1) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(e) when the violations were related to the same driving under the influence conviction; (2) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(a) when the violations were related to the same controlled substance conviction; and (3) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(d) and (e) when the violations were related to the same motor vehicle action or actions.

Statement of Policy

Under this amended prompt settlement policy, the FAA will send an eligible individual who is the subject of an investigation for an apparent violation of 14 CFR 67.403(a)(1) through (4) a letter of investigation (LOI) that will offer the individual the opportunity to enter into a settlement agreement. The settlement agreement will provide for the prompt issuance of an emergency order (1) revoking all airman, ground instructor, and medical certificates the individual holds; (2) requiring the immediate surrender of the affected certificates; and (3) allowing application for a new airman or ground instructor after nine months from the effective date of the order. The settlement agreement will require the individual to waive any right to appeal from the order. Both certificate holders who are reasonably able to exercise the privileges of any airman or ground instructor certificate they hold or certificate holders who are not reasonably able to exercise such privileges may enter into a settlement agreement under this amended policy.[8]

This amended policy will apply when any controlled substance conviction or motor vehicle action that was the basis for a violation of 14 CFR 61.15(a), (d), or (e) also forms the basis for an intentional falsification violation under 14 CFR 67.403(a)(1). Under this amended policy, the FAA will include in the LOI notification to individuals that they may contact the applicable program office within ten days of receipt of the LOI to request consideration under the prompt settlement policy.

Following an individual's request to be considered under this amended policy, the FAA will determine the individual's eligibility for the policy. Individuals will be eligible for the policy if there is no basis other than that presented by the 14 CFR 67.403(a)(1) through (4) (or 14 CFR 61.15, if applicable) violations to question their qualification to hold a part 61, 63, or 65 certificate and the FAA has found they have not previously violated 14 CFR 67.403(a)(1) through (4).

If the FAA deems an individual is eligible for this amended policy, the Chief Counsel, or Chief Counsel's designee, will provide the individual, or his or her legal representative, a formal agreement that sets forth the conditions for prompt settlement. The terms of this settlement agreement will normally include the following provisions.

(1) The parties must execute the settlement agreement within ten days after the FAA sends the agreement to the individual.

(2) The FAA will issue an emergency order revoking all airman, ground instructor, and unexpired medical certificates the individual holds immediately upon receiving the fully executed settlement agreement.

(3) The emergency order of revocation will (i) require the immediate surrender of all airman, ground instructor, and unexpired medical certificates the individual holds to agency counsel; (ii) notify the individual that the failure to immediately surrender these certificates could subject the individual to further legal enforcement action, including a civil penalty; and (iii) inform the individual that the FAA will not accept an application for a new airman certificate under 14 CFR part 61, 63, or 65, or ground instructor certificate under 14 CFR part 61, for a period of nine months from the effective date of the order. *See* fn.6 for details regarding certificate application waiting periods.

(4) The individual will waive all appeal rights from the emergency order of revocation.

(5) The individual acknowledges that this agreement only concerns this enforcement action brought by the FAA and does not affect any action that might be brought by State or other Federal agencies (whether civil or criminal), and that this agreement does not prevent the FAA from providing information about this matter to State or other Federal agencies.

(6) The parties will agree to bear their own costs and attorney fees, if any, in connection with the matter.

(7) The individual will agree to not initiate any litigation before any court, tribunal, or administrative entity concerning any costs, damages, or attorney fees, including applications under the Equal Access to Justice Act, incurred as a result of the above-referenced matter.

(8) The individual will agree to waive any and all causes of action against the FAA and its current and/or former officials and employees relating to the above-referenced matter.

This amended policy will allow eligible individuals to more quickly apply for new 14 CFR parts 61, 63, and 65 certificates following a violation of 14 CFR 67.403(a)(1) through (4). It also reduces uncertainty about the date of issuance of emergency orders of revocation related to such violations, eliminates the unpredictability of litigation, and promotes better resource allocation.

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part 65, and that certificate was a mechanic or repairman certificate, the waiting period will apply to both kinds certificates; or (4) 14 CFR part 65, and that certificate was an air traffic control tower operator, aircraft dispatcher, or parachute rigger certificate, the waiting period will apply to the same kind of certificate revoked.

[7] Under 14 CFR 61.15(a), a conviction for the violation of any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for suspension or revocation of any certificate, rating, or authorization issued under 14 CFR part 61. Under 14 CFR 61.15(d), except for a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within three years of a previous motor vehicle action is grounds for suspension or revocation of any certificate, rating, or authorization issued under 14 CFR part 61. Under 14 CFR 61.15(e), each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA not later than 60 days after the motor vehicle action.

[8] The FAA generally takes emergency certificate action when (i) the certificate holder lacks qualifications, there is a reasonable basis to question whether the certificate holder is qualified to hold the certificate, or the certificate holder does not comply with statutory or regulatory requirements to cooperate with the FAA; and (ii) the certificate holder is reasonably able to exercise the privileges of the certificate. *See* Order 2150.3C, chap. 7, para. 4.a.(2). The FAA generally issues notices proposing certificate action (rather than emergency certificate actions) when only the first criterion is met, *e.g.,* the certificate holder lacks qualifications. For example, the FAA generally issues a notice proposing certificate action involving the revocation of a pilot certificate when the certificate holder only holds a pilot certificate and is required to but does not hold a valid medical certificate. For the limited purposes of this amended policy, individuals who are not reasonably able to exercise the privileges of any airman certificate they hold may enter into a settlement agreement for the issuance of an emergency order of revocation as described herein.

Issued in Washington, DC, on January 19, 2022.

Cynthia A. Dominik,

Assistant Chief Counsel for Enforcement.

[FR Doc. 2022–01308 Filed 1–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0276; Airspace Docket No. 21–ACE–1]

RIN 2120–AA66

Amendment, Establishment, and Revocation of Multiple Air Traffic Service (ATS) Routes in the Vicinity of Neosho, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: The FAA is correcting the effective date listed and the area navigation (RNAV) routes T–411 and T–413 regulatory text title information formatting listed in the final rule for Docket No. FAA–2021–0276 that published in the **Federal Register** of January 14, 2022. That final rule amended Jet Route J–181 and VHF Omnidirectional Range (VOR) Federal airways V–13, V–14, V–15, and V–307; established RNAV routes T–411 and T–413; and removed VOR Federal airway V–506 in the vicinity of Neosho, MO. This action reflects the correct final rule effective date and the correct RNAV routes T–411 and T–413 title information formatting.

DATES: The effective date of the final rule published on January 14, 2022 (87 FR 2320) is corrected to March 24, 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.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The FAA published a final rule for Docket No. FAA–2021–0276 in the **Federal Register** (87 FR 2320; January 14, 2022) amending Jet Route J–181 and VOR Federal airways V–13, V–14, V–15, and V–307; establishing RNAV routes T–411 and T–413; and removing VOR Federal airway V–506 in the vicinity of Neosho, MO. Subsequent to publication, it was determined that the effective date published in the final rule incorrectly listed the date as January 27, 2022, and the regulatory text T–411 and T–413 title information formatting in the descriptions was published in all capital letters and did not conform to the FAA Order JO 7400.2 regulatory guidance for RNAV route descriptions. The correct effective date for this action is March 24, 2022, and the correct T–411 and T–413 title information formatting should not be in all capital letters. The corrections are reflected in this final rule correction.

Need for Correction

As published, the final rule contained errors in the effective date listed and the T–411 and T–413 regulatory text title information formatting and require correction. This corrective action is necessary to avoid confusion as to the correct effective date and to publish the new RNAV route descriptions using the correct formatting for that rulemaking, Docket No. FAA–2021–0276.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the effective date and the T–411 and T–413 RNAV route descriptions reflected in Docket No. FAA–2021–0276, as published in the **Federal Register** of January 14, 2022 (87 FR 2320, FR Doc. 2022–00458), are corrected as follows:

1. In FR Doc. 2022–00458, appearing on page 2320, in the second column, at lines 1 and 2, correct ''January 27, 2022'' to read ''March 24, 2022.''

■ 2. In FR Doc. 2022–00458, appearing on page 2322, in the first column, at line 9, correct ''T–411 RAZORBACK, AR (RZC) TO LINCOLN, NE (LNK) [NEW]'' to read ''T–411 Razorback, AR (RZC) to Lincoln, NE (LNK) [New].''

■ 3. In FR Doc. 2022–00458, appearing on page 2322, in the first column, at line 15, correct ''T–413 RAZORBACK, AR (RZC) TO PIERRE, SC (PIR) [NEW]'' to read ''T–413 Razorback, AR (RZC) to Pierre, SD (PIR) [New].''

Issued in Washington, DC, on January 21, 2022.

Michael R. Beckles,

Manager, Rules and Regulations Group.

[FR Doc. 2022–01360 Filed 1–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0985; Airspace Docket No. 21–ASO–28]

RIN 2120–AA66

Amendment and Establishment of Class E Airspace; Key Largo, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E surface airspace to accommodate Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Ocean Reef Club Airport, Key Largo, FL. This action also amends Class E airspace extending upward from 700 feet above the surface for Ocean Reef Club Airport by updating the geographic coordinates of the airport and correcting the descriptor by replacing AL with FL. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, March 24, 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. The Order 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: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code.

Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E surface airspace, and amends Class E airspace extending upward from 700 feet above the surface, to support IFR operations for Ocean Reef Club Airport, Key Largo, FL.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 68173, December 1, 2021) for Docket No. FAA–2021–0985 to establish Class E Surface airspace, and amend Class E airspace extending upward from 700 feet above the surface, for Ocean Reef Club Airport, Key Largo, FL.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received pertaining to this action.

Class E airspace designations are published in Paragraph 6002 and 6005, respectively, 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 7400.11F.

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 routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E surface airspace within a 4.0-mile radius of Ocean Reef Club Airport to accommodate RNAV SIAPs serving the airport. This action also amends Class E airspace extending upward from 700 feet above the surface by updating the airport's geographic coordinates to coincide with the FAA's database, and correcting the airspace descriptor by replacing AL with FL.

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, 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 E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11. 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. 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 minimal. Since this is a routine matter that only affects air traffic procedures an air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Surface Airspace.

* * * * *

ASO FL E2 Key Largo, FL [NEW]

Ocean Reef Club Airport, FL
(Lat. 25°19′28″ N, long. 80°16′33″ W)

That airspace extending upward from the surface within a 4-mile radius of Ocean Reef Club Airport. This Class E airspace 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Key Largo, FL [Amended]

Ocean Reef Club Airport, FL
(Lat. 25°19′28″ N, long. 80°16′33″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Ocean Reef Club Airport.

Issued in College Park, Georgia, on January 19, 2022.

Andreese C. Davis,

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

[FR Doc. 2022–01280 Filed 1–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0922; Airspace Docket No. 21–AEA–30]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface in the Philadelphia, PA area, by updating the several airport names and geographic coordinates. Controlled airspace is

necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, March 24, 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. The Order 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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends airspace for the Philadelphia, PA area to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 67672, November 29, 2021) for Docket No. FAA–2021–0922 to amend Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface in the Philadelphia, PA area, by updating the names and geographic coordinates of several airports in the area.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6005, respectively, 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 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 routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by amending Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface at the following airports:

Philadelphia International Airport, by updating the geographic coordinates to coincide with the FAA's database;

New Castle Airport (formerly New Castle County Airport), by updating the airport's name;

Summit Airport (formerly Summit Airpark), by updating the airport's name and geographic coordinates, and replacing the outdated term Airport/Facility Directory with the term Chart Supplement in the airport description.

Also, the Class E surface airspace for Millville Municipal Airport is amended by updating the airport's geographic coordinates.

Subsequent to publication of the NPRM, the FAA discovered unnecessary verbiage in the Philadelphia, PA, E5 description. This action removes ''excluding the airspace that coincides with the Elkton, MD; Wrightstown, NJ; Pittstown, NJ; Reading, PA; and Allentown, PA Class E airspace areas'' from the description.

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. 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 minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 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.

* * * * *

AEA DE D Wilmington, DE [Amended]

New Castle Airport, DE

(Lat. 39°40′43″ N, long. 75°36′24″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of the New Castle Airport. 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 Surface Airspace.

* * * * *

AEA DE E2 Wilmington, DE [Amended]

New Castle Airport, DE
(Lat. 39°40′43″ N, long. 75°36′24″ W)

Within a 4.2-mile radius of the New Castle Airport. This Class E 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.

AEA NJ E2 Millville, NJ [Amended]

Millville Municipal Airport, NJ
(Lat. 39°22′04″ N, long. 75°04′20″ W)

That airspace extending upward from the surface within a 4-mile radius of the Millville Municipal Airport.

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

* * * * *

AEA PA E5 Philadelphia, PA [Amended]

Philadelphia International Airport, PA
(Lat. 39°52′20″ N, long. 75°14′26″ W)
Chester County G.O. Carlson Airport, PA
(Lat. 39°58′44″ N, long. 75°51′56″ W)
New Castle Airport, DE
(Lat. 39°40′43″ N, long. 75°36′24″ W)
Summit Airport, DE
(Lat. 39°31′16″ N, long. 75°43′25″ W)
Millville Municipal Airport, NJ
(Lat. 39°22′04″ N, long. 75°04′20″ W)

That airspace extending upward from 700 feet above the surface within a 31-mile radius of Philadelphia International Airport extending clockwise from a 225° bearing to a 307° bearing from the airport and within a 37-mile radius of Philadelphia International Airport extending from a 307° bearing to a 053° bearing from the airport and within a 33-mile radius of Philadelphia International Airport extending from a 053° bearing to a 173° bearing from the airport and within a 16-mile radius of Philadelphia International Airport extending from a 173° bearing from the airport to a 225° bearing from the airport, and within a 7-mile radius of Chester County G.O. Carlson Airport, and within a 6.7-mile radius of New Castle Airport, and within an 8-mile radius of Summit Airport and within a 6.5-mile radius of Millville Municipal Airport.

Issued in College Park, Georgia, on January 19, 2022.

Andreese C. Davis,

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

[FR Doc. 2022–01281 Filed 1–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9960]

RIN 1545–BP79

Guidance Under Section 958 on Determining Stock Ownership

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the treatment of domestic partnerships for purposes of determining amounts included in the gross income of their partners with respect to foreign corporations. The final regulations affect United States persons that own stock of foreign corporations through domestic partnerships and domestic partnerships that are United States shareholders of foreign corporations.

DATES:

Effective date: These regulations are effective on January 25, 2022.

Applicability dates: For dates of applicability, see §§ 1.956–1(g)(4) and 1.958–1(d)(4).

FOR FURTHER INFORMATION CONTACT: Edward J. Tracy at (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 10, 2018, the Department of the Treasury (''Treasury Department'') and the IRS published proposed regulations (REG–104390–18) under sections 951, 951A, 1502, and 6038 in the **Federal Register** (83 FR 51072) that included guidance with respect to the treatment of domestic partnerships that own stock in controlled foreign corporations, as defined in section 957 (''CFCs''), for purposes of section 951A (the ''2018 proposed regulations''). The 2018 proposed regulations set forth a ''hybrid approach'' that generally treated a domestic partnership that is a United States shareholder, as defined in section 951(b) (''U.S. shareholder''), with respect to a CFC (''U.S. shareholder partnership'') as an entity with respect to its partners that are not U.S. shareholders (''non-U.S. shareholder partners'') but as an aggregate of its partners with respect to its partners that are U.S. shareholders (''U.S. shareholder partners'').

On June 21, 2019, the Treasury Department and the IRS published final regulations (TD 9866) in the **Federal Register** (84 FR 29288, as corrected at 84 FR 44223, 84 FR 44693, and 84 FR 53052) under sections 951, 951A, 1502, and 6038 that include guidance with respect to the treatment of domestic partnerships that own stock in CFCs for purposes of section 951A (the ''final section 951A regulations''). Instead of the ''hybrid approach'' described in the 2018 proposed regulations, the final section 951A regulations generally treat a domestic partnership as an aggregate of all of its partners for purposes of computing income inclusions under section 951A (and other provisions that apply by reference to section 951A). § 1.951A–1(e)(1). That is, under the final section 951A regulations, partners do not take into account a distributive share of the partnership's section 951A inclusion with respect to the partnership-owned CFCs but instead are treated as proportionately owning the stock of the partnership-owned CFCs. *See id.* Thus, as in the case of foreign partnerships, income inclusions under section 951A are determined directly by U.S. shareholder partners of a domestic partnership that owns CFCs. The final section 951A regulations apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which those taxable years of foreign corporations end. § 1.951A–7.

Concurrent with the issuance of the final section 951A regulations, the Treasury Department and the IRS published proposed regulations (REG–101828–19) under sections 951, 951A, 954, 956, 958, and 1502 in the **Federal Register** (84 FR 29114, as corrected at 84 FR 37807) (the ''2019 proposed regulations''). Consistent with the approach adopted in the final section 951A regulations, the 2019 proposed regulations generally extended the treatment of domestic partnerships as aggregates of their partners for purposes of determining income inclusions under section 951 and for purposes of provisions that apply by reference to section 951. Proposed § 1.958–1(d).

On August 22, 2019, the Treasury Department and the IRS published Notice 2019–46, 2019–37 I.R.B. 695, which announced the intent to issue regulations that would permit, in certain cases, the ''hybrid approach'' described

in the 2018 proposed regulations to be applied to domestic partnerships or S corporations for taxable years ending before June 22, 2019.

On July 23, 2020, the Treasury Department and the IRS published final regulations (TD 9902) in the **Federal Register** (85 FR 44620, as corrected at 85 FR 64040 and 85 FR 79853) related to the portion of the 2019 proposed regulations under sections 951A and 954 addressing the treatment of income subject to a high rate of foreign tax.

A notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register** (REG–118250–20) provides guidance on the treatment of domestic partnerships and S corporations that own passive foreign investment companies (as defined in section 1297(a)) (''PFICs'') and their domestic partners and shareholders, as well as on other PFIC and CFC-related issues (the ''2022 proposed PFIC regulations'').

This rulemaking finalizes the portion of the 2019 proposed regulations that generally treat domestic partnerships as aggregates of their partners for purposes of determining income inclusions under section 951 and for purposes of provisions that apply specifically by reference to section 951 (the ''final regulations'').

In the 2019 proposed regulations, the Treasury Department and the IRS requested comments on the other provisions in the Internal Revenue Code (''Code'') that apply by reference to ownership within the meaning of section 958(a) for which aggregate treatment for domestic partnerships would be appropriate. The 2019 proposed regulations also requested comments on the aggregate treatment of domestic partnerships in specific areas, including for purposes of determining the controlling domestic shareholders of a CFC and for purposes of applying the PFIC regime. The Treasury Department and the IRS received three comments in response to the 2019 proposed regulations, each of which were considered in these final regulations. No public hearing on the 2019 proposed regulations was held because there were no requests to speak.

Summary of Comments and Explanation of Revisions

Comments outside the scope of this rulemaking are generally not addressed but may be considered in connection with future guidance projects. All written comments received in response to the proposed regulations that are being finalized in this rulemaking are available at *www.regulations.gov* or upon request.

I. Application of Section 956

Subject to certain exceptions, the 2019 proposed regulations treated domestic partnerships as aggregates of their partners for purposes of sections 951 and 951A and for purposes of any other provision that applies by reference to section 951 or section 951A. Proposed § 1.958–1(d)(1) and (2). Although section 951(a)(1)(B) requires a U.S. shareholder of a CFC to include in gross income the amount determined under section 956 with respect to the U.S. shareholder (to the extent not excluded from gross income under section 959(a)(2)), section 956 itself does not specifically apply by reference to section 951 (or section 951A). Accordingly, the final regulations clarify that aggregate treatment of domestic partnerships applies for purposes of section 956(a) and any provisions that specifically apply by reference to section 956(a) (such as § 1.956–1(a)(2)) to ensure that a U.S shareholder partner determines a section 956 amount with respect to CFCs owned through a domestic partnership as part of the U.S. shareholder partner's section 951(a) inclusion. § 1.958–1(d)(1) and (d)(3)(iii). Aggregate treatment does not apply, however, for purposes of section 956(c) or (d) (or provisions that apply by reference to these sections) because treating a domestic partnership as an entity separate from its partners is more appropriate to carry out the purposes of these provisions. *See, e.g.,* § 1.956–4(e) (providing rules concerning the application of section 956 to, for example, obligations of partnerships). As discussed in the preamble to the 2019 proposed regulations, the treatment of a partnership as an entity or an aggregate is determined in part based on the policies underlying the specific provision at issue. *See* 84 FR 29115–29116.

To avoid similar confusion regarding the scope of § 1.958–1(d), the final regulations replace the language ''any other provision that applies by reference'' to section 951 or section 951A in proposed § 1.958–1(d)(1) with ''any provision that specifically applies by reference'' to section 951, section 951A, or section 956(a). The addition of the word ''specifically'' is intended to clarify that the rule in § 1.958–1(d) applies only to the particular provision within a Code section or regulation that applies specifically by reference to section 951, section 951A, or section 956(a) rather than the section or regulation in its entirety. Additionally, the final regulations clarify that the rule in § 1.958–1(d)(1) applies for purposes of any provision that specifically applies by reference to regulations issued under or relating to the sections identified in § 1.958–1(d)(1). Corresponding revisions are made to the cross references to § 1.958–1(d) provided in §§ 1.951–1(a)(4) and 1.951A–1(e).

Certain existing final regulations treat domestic partnerships as entities separate from their partners for purposes of section 956. § 1.956–1(a)(2)(i) and (iii) and (a)(3)(iv). Because this treatment is inconsistent with the aggregate approach, the 2019 proposed regulations modified the applicability date of these provisions so they would cease to apply once the 2019 proposed regulations were finalized. Proposed § 1.956–1(g)(4). Rather than modifying the applicability dates as was done in the 2019 proposed regulations, however, the final regulations simply remove these provisions. Accordingly, because those provisions are being removed as part of the final regulations, the proposed applicability date provisions under section 956 are no longer relevant and are not being finalized.

II. Passive Foreign Investment Companies

The preamble to the 2019 proposed regulations requested comments with respect to the application of the PFIC regime to domestic partnerships that directly or indirectly own PFIC stock, particularly with respect to whether elections and income inclusions are more appropriate at the level of the domestic partnership or at the level of its partners. 84 FR 29120. Comments were received regarding PFIC elections and inclusions, the CFC overlap rule in section 1297(d), and other PFIC-related issues involving domestic partnerships. These comments are addressed in the 2022 proposed PFIC regulations in order to provide taxpayers additional opportunity to comment.

III. Related Person Insurance Income

Section 952(a) provides that subpart F income includes insurance income, as defined in section 953. Under section 953(c)(2), related person insurance income (''RPII'') is any insurance income (as defined in section 953(a)) attributable to a policy of insurance or reinsurance that directly or indirectly insures a United States shareholder (as defined in section 953(c)(1)(A)) of the controlled foreign corporation (as defined in section 953(c)(1)(B)), or a person related to the United States shareholder.

A comment requested that aggregate treatment be applied for purposes of determining RPII such that there would only be RPII to the extent of the

domestic partnership's domestic partners, which is the same result as for foreign partnerships. The Treasury Department and the IRS agree that aggregate principles should apply for purposes of section 953(c). However, in order to provide taxpayers an additional opportunity to comment, this comment is addressed in the 2022 proposed PFIC regulations.

IV. Controlling Domestic Shareholders

The ''controlling domestic shareholders'' of a CFC make certain elections with respect to the CFC, such as electing the method of calculating the CFC's earnings and profits under section 964(a) and electing to exclude tentative gross tested income items from gross tested income under section 951A(c)(2)(A)(i)(III). *See* §§ 1.964–1(c)(3) and 1.951A–2(c)(7)(viii). Under § 1.964–1(c)(5)(i), the controlling domestic shareholders of a CFC are the U.S. shareholders that, in the aggregate, own (within the meaning of section 958(a)) more than 50 percent of the total combined voting power of all classes of stock of the CFC entitled to vote and that undertake to act on the CFC's behalf. If the ownership requirement is not satisfied, the controlling domestic shareholders of the CFC are all of the U.S. shareholders that own (within the meaning of section 958(a)) stock of the CFC. *Id.*

With respect to U.S. shareholder partnerships, the 2019 proposed regulations did not apply aggregate treatment for purposes of determining a CFC's controlling domestic shareholders, and a domestic partnership could qualify as a controlling domestic shareholder of the CFC. Proposed § 1.958–1(d)(2). The preamble to the 2019 proposed regulations requested comments on whether aggregate treatment should apply in this context so that some or all of the U.S. shareholder partners, rather than the partnership, would make elections applicable to the CFC for purposes of sections 951 and 951A. 84 FR 29119. One comment was received that recommended, on balance, that aggregate treatment should not apply for purposes of determining the controlling domestic shareholders of CFCs under § 1.964–1(c)(5)(i).

The final regulations do not extend aggregate treatment for determining the controlling domestic shareholders of a CFC under § 1.964–1(c)(5)(i). However, the Treasury Department and the IRS believe that aggregate treatment should apply to domestic partnerships for purposes of determining the controlling domestic shareholders of a CFC under § 1.964–1(c)(5). Thus, the 2022 proposed PFIC regulations revise § 1.958–1(d)(2) to provide that aggregate treatment applies for purposes of determining the controlling domestic shareholders of a CFC. This change is included in the 2022 proposed PFIC regulations to give taxpayers an additional opportunity to comment.

V. Previously Taxed Earnings and Profits and Basis Adjustments

The preamble to the 2019 proposed regulations noted that, historically, domestic partnerships had been treated as owning stock within the meaning of section 958(a) for purposes of determining their section 951 inclusions, and, thus, previously taxed earnings and profits (''PTEP'') accounts under section 959 were maintained, and related basis adjustments under section 961 were made, at the partnership level. 84 FR 29119. As a result, comments were requested on appropriate rules, such as necessary adjustments to PTEP and related basis amounts, for the transition to the aggregate approach to domestic partnerships described in the 2019 proposed regulations once those regulations were finalized. 84 FR 29119–20. These issues, and the comments received, are beyond the scope of this rulemaking and therefore are not addressed herein; however, the Treasury Department and the IRS intend to address these comments in a separate guidance project involving PTEP (the ''proposed PTEP regulations''). The proposed PTEP regulations will provide guidance on a broad range of issues, such as the maintenance of PTEP accounts under section 959, the treatment of PTEP distributions, and basis adjustments under section 961, including with respect to CFCs held by partnerships.

VI. Application of Section 1248

The preamble to the 2019 proposed regulations stated that, subject to certain exceptions, aggregate treatment of domestic partnerships applied only with respect to sections 951 and 951A, and any provision that applies by reference to sections 951 and 951A, and, therefore, did not apply for any other purpose of the Code, including section 1248. 84 FR 29119. Comments were received regarding section 1248, including with respect to dispositions by domestic partnerships of CFC stock, dispositions of interests in domestic partnerships that own CFC stock, and the interaction between section 1248 and section 751.

The final regulations do not address these comments, which are beyond the scope of this rulemaking. The Treasury Department and the IRS recognize, however, that section 1248 applies in part by reference to section 951 and section 951A (in the latter case, as a result of section 951A(f)(1)(A)). *See* section 1248(b)(1)(A) and (d)(1). Therefore, the final regulations clarify that the aggregate approach set forth in § 1.958–1(d)(1) does not apply for purposes of section 1248, which is consistent with the intended scope of the rules as described in the preamble to the 2019 proposed regulations. § 1.958–1(d)(2)(iv). The final regulations do not affect the application of § 1.1248–1(a)(4). Future guidance, including the proposed PTEP regulations, may address the application of section 1248(b)(1)(A) and (d)(1) to transactions involving a domestic partnership's sale of a CFC, such as the transaction described in Rev. Rul. 69–124, 1969–1 C.B. 203.

VII. Non-Grantor Trusts and Estates

The preamble to the 2019 proposed regulations requested comments on whether aggregate treatment should be extended to other pass-through entities such as certain trusts or estates. In response to this request, one comment recommended that aggregate treatment not be extended to domestic non-grantor trusts and domestic estates, noting that there is no corollary authority to section 7701(a)(4) (authorizing the treatment of domestic partnerships as not domestic when the context requires) which would permit the Treasury Department and the IRS to treat domestic non-grantor trusts and domestic estates as not domestic. The comment further noted that if the domestic non-grantor trust or domestic estate had a section 951(a) or section 951A inclusion but did not distribute the income to its beneficiaries, the trust or estate itself would be liable for tax on that income (unlike a partnership); thus, two separate taxing regimes could be necessary if an aggregate approach were limited to distributed income. Finally, the comment suggested that identifying U.S. shareholders of a CFC the stock of which is owned by a domestic non-grantor trust or a domestic estate would be complex if the trust or estate had discretionary beneficiaries.

Although aggregate treatment of domestic partnerships for purposes of sections 951 and 951A (and provisions that specifically apply by reference to those sections) is not based on the grant of authority under section 7701(a)(4), the Treasury Department and the IRS nevertheless agree, for the other reasons stated in the comment, that aggregate treatment should not be extended to domestic non-grantor trusts and domestic estates.

VIII. Other Changes

The final section 951A regulations generally adopted aggregate treatment of domestic partnerships for purposes of section 951A. § 1.951A–1(e). The preamble to the 2019 proposed regulations noted that once those regulations were finalized, § 1.951A–1(e) would be unnecessary because that rule would be subsumed by § 1.958–1(d). 84 FR 29119. The preamble to the 2019 proposed regulations further noted that § 1.951–1(h), which treated certain controlled domestic partnerships as foreign partnerships for purposes of determining the stock of a CFC owned (within the meaning of section 958(a)) by a U.S. person, would similarly be unnecessary. *Id.* No comments addressed those proposed regulations. As a result, § 1.951A–1(e) is amended to remove paragraphs (e)(1) through (3) and include a general cross-reference to § 1.958–1(d) in § 1.951A–1(e) for the treatment of domestic partnerships for purposes of section 951A. The final regulations also remove paragraph (h) of § 1.951–1.

IX. Applicability Dates

A. Application Before Finalization Date

Proposed § 1.958–1(d)(4) provided that the regulations under section 958 would apply to taxable years of foreign corporations beginning on or after the date the final regulations are published in the **Federal Register** (the ''finalization date'') and to taxable years of U.S. persons in which or with which such taxable years of the foreign corporations end (the ''general applicability rule''). However, domestic partnerships could apply the regulations, when finalized, to taxable years of a foreign corporation beginning after December 31, 2017, and to taxable years of the domestic partnership in which or with which such taxable years of the foreign corporation end, subject to the requirement that the partnership, its U.S. shareholder partners, and other related domestic partnerships and their U.S. shareholder partners consistently apply the regulations with respect to all foreign corporations the partnerships own (within the meaning of section 958(a), determined without regard to proposed § 1.958–1(d)(1)) (the ''pre-finalization applicability option''). Proposed § 1.958–1(d)(4). The 2019 proposed regulations also permitted domestic partnerships, their U.S. shareholder partners, and related domestic partnerships and their U.S. shareholder partners to rely on proposed § 1.958–1(d)(4), subject to the same consistency requirement (the ''reliance option''). *See* 84 FR 29119.

One comment made several recommendations with respect to the applicability date of proposed § 1.958–1(d). First, the comment suggested that the reference to a ''domestic partnership'' in the pre-finalization applicability option was inconsistent with the reference to ''U.S. persons'' in the general applicability rule and recommended that the final regulations be revised to reference ''U.S. person'' in both places. With respect to the consistency requirements (including consistency between years), the comment suggested that U.S. persons owning stock of a foreign corporation through a domestic partnership be allowed to take individual positions as to whether to apply the pre-finalization applicability option, subject to all related partners taking the same position. The comment noted that an individualized approach would allow non-U.S. shareholder partners to decide whether to be subject to section 951 inclusions or potentially to be subject to the PFIC regime during the period before the finalization date and would not materially impact U.S. shareholder partners.

The reference to ''domestic partnerships'' and their U.S. shareholder partners in the pre-finalization applicability option was intentional. Although the general applicability rule applies to all affected U.S. persons, certain persons may choose to apply the regulations before the finalization date. By limiting this group of persons to domestic partnerships and their U.S. shareholder partners (and related domestic partnerships), the rule aims to strike a balance between identifying a small group of persons who may be able to coordinate with respect to the decision to apply the pre-finalization applicability option versus all persons that may be affected by that decision. Accordingly, the suggested revision to reference ''U.S. persons'' in the pre-finalization applicability option is not adopted.

In addition, the suggested revision would allow partners to take individualized positions with respect to the pre-finalization applicability option and could cause significant administrative, partnership accounting, and reporting difficulties. For example, if each partner were allowed to take an individual position on the applicability date of the regulations, partners following the general applicability rule (regardless of the extent of their ownership) might receive a distributive share of the partnership's section 951 inclusions while U.S. shareholder partners applying the pre-finalization applicability option have direct section 951 inclusions. The Treasury Department and the IRS believe that consistency among all affected parties in applying the pre-finalization applicability option is important for proper administration of the regulations. As a result, the Treasury Department and the IRS have determined that the difficulty posed by an individualized approach outweighs the potential benefit the approach would provide to a partner, and this comment is not adopted. The Treasury Department and the IRS are aware that, given the potential scope of the consistency requirement, it may be difficult to meet in more widely held partnership structures, and thus application of the pre-finalization applicability option may be limited.

The comment recommended that if the individualized approach is not adopted, the final regulations should require a formal election in order to apply the pre-finalization applicability option instead of the consistency requirement. The election would be made only by a domestic partnership and all related domestic partnerships and would be binding on all domestic partners. The comment asserted that this approach would clarify the application of the pre-finalization applicability option by avoiding potential uncertainty as to whether all U.S. shareholder partners took a consistent position. The comment further suggested that a partnership-only election to apply the pre-finalization applicability option would prevent U.S. shareholder partners from refusing, without justification, to act in accordance with the partnership's election.

The Treasury Department and the IRS have determined that, although the consistency requirement among all related domestic partnerships and their U.S. shareholder partners may be difficult to meet in certain cases, requiring consistency among all persons required to apply the pre-finalization applicability option is important for proper administration of the rules. Absent this requirement, U.S. shareholder partners could choose not to amend their returns, and therefore continue to report under the entity approach, even though the partnership and other partners amended their returns and reported under the aggregate approach pursuant to the pre-finalization applicability option.[1] In

[1] A U.S. shareholder partner's liability could differ under an aggregate or entity approach if, for example, the partner is a U.S. shareholder partner

Continued

addition, maintaining the U.S. shareholder consistency requirement minimizes administrative, partnership accounting, and reporting difficulties (for example, in connection with PTEP accounts) that could arise if a partnership-only election were adopted and one or more U.S. shareholder partners chose not to amend their returns in accordance with the partnership's election. The consistency requirement is also expected to enhance compliance and administration at the U.S. shareholder partner-level with respect to amended returns (or administrative adjustment requests) because it requires more coordination between the partnership and its partners than a partnership-only election would require. Under either approach, if a partnership chooses the pre-finalization applicability option on an amended return (or by initiating an administrative adjustment request), any U.S. shareholder partner would receive updated information that it no longer has a distributive share of the partnership's section 951 inclusions but would still need to take into account section 951 inclusions directly under the aggregate approach. Further, the Treasury Department and the IRS are concerned that the lack of coordination involved in a partnership-only election, as opposed to the consistency requirement, may create uncertainty at the U.S. shareholder partner level as to whether the partner merely accounts for the reduction in the distributive share from the partnership or must also directly take into account income inclusions. Accordingly, this comment is not adopted.

The comment also requested that the final regulations clarify whether the pre-finalization applicability option is available if all required parties file amended returns. The Treasury Department and the IRS confirm that, subject to the consistency requirement, a domestic partnership may apply the regulations on an amended return or through initiating an administrative adjustment request under section 6227. In instances where a domestic partnership files an amended return (that is, in the case of partnerships not subject to sections 6221 through 6241), its partners (both U.S. shareholder partners and non-U.S. shareholder partners) will likely need to also file amended returns in order to satisfy the consistency requirement.

Finally, the comment expressed concern for cases in which a domestic partnership filed its income tax return for calendar year 2018 before the issuance of the 2019 proposed regulations reporting section 951 inclusions by the partnership in accordance with then current law (including issuing Schedules K–1 to its partners) but subsequently filed a superseding original or amended return for such taxable year relying on the 2019 proposed regulations. In that case, the comment recommended that the ability to rely on the 2019 proposed regulations should not be contingent upon all U.S. shareholder partners filing superseding or amended returns on the same basis and that all partners should be permitted to decide separately whether to file a superseding or amended return to rely on the proposed regulations. The comment further recommended that, if a non-U.S. shareholder partner decides to rely on the proposed regulations and the foreign corporation is also a PFIC, the mechanism for the non-U.S. shareholder partner to make a QEF or mark-to-market election under section 1295 or section 1296, respectively, should be simplified and that purging elections should not be required solely due to the status of the CFC/PFIC during the period before the general applicability rule applies. The comment analogized these recommendations to relief provided in Notice 2019–46, which permitted domestic partnerships and partners to file returns for 2018 applying the hybrid approach in the 2018 proposed regulations rather than the aggregate approach adopted by the final section 951A regulations.

The Treasury Department and the IRS believe that, in all cases, proper administration of the regulations before the general applicability rule requires the satisfaction of the consistency requirement in § 1.958–1(d)(4)(i) and precludes the ability of non-U.S. shareholder partners to unilaterally apply the regulations. Therefore, the final regulations do not adopt more permissive rules because a domestic partnership filed a tax return and issued Schedule K–1s to its partners before the issuance of the 2019 proposed regulations. Furthermore, the Treasury Department and the IRS find this situation sufficiently different from the relief provided in Notice 2019–46 for domestic partnerships that had already reported a different position on a Schedule K–1 based on the 2018 proposed regulations. Although the final section 951A regulations applied retroactively and superseded the 2018 proposed regulations, the notice provided flexibility to apply the 2018 proposed regulations due to the compliance burdens associated with the change from the hybrid approach in the 2018 proposed regulations to the aggregate approach in the final section 951A regulations and the relatively short period until the extended filing deadline for calendar-year partnerships. This same concern does not exist here because, before the prospective application of the regulations under the general applicability rule, taxpayers were permitted to rely on the 2019 proposed regulations (in accordance with proposed § 1.958–1(d)(4)) or to continue to apply prior law. Accordingly, the final regulations do not adopt these comments.

B. Different Taxable Years of the Partnership, Partners, and CFC

Proposed § 1.958–1(d)(4) provided that § 1.958–1(d), when finalized, would apply to taxable years of foreign corporations beginning on or after the finalization date and to taxable years of U.S. persons in which or with which the taxable years of the foreign corporations end. A comment noted that, under this rule, in certain circumstances where a fiscal year U.S. shareholder partnership with U.S. shareholder partners has a different taxable year than its CFC and U.S. shareholder partners, the applicability date could cause the U.S. shareholder partners to have two years of section 951 inclusions in the same taxable year with respect to the same CFC—that is, a distributive share of the partnership's section 951 inclusion from the CFC's last taxable year before the application of the final regulations, and a direct section 951 inclusion with respect to the first taxable tax year of the CFC subject to the final regulations. For example, if a U.S. shareholder partnership has a June 30 taxable year and both the CFC it owns and its U.S. shareholder partners have a calendar taxable year, the final regulations would, under the general applicability rule, first apply to the CFC's taxable year ending December 31, 2022. Accordingly, for its taxable year ending December 31, 2022, the U.S. shareholder partners would have a distributive share of the partnership's section 951 inclusion for the CFC's taxable year ending December 31, 2021 (for the U.S. shareholder partnership's taxable year ending June 30, 2022) and would also have a direct section 951 inclusion for the CFC's taxable year ending December 31, 2022. The comment suggested that if the result in the example is intended, the Treasury Department and the IRS should consider treating the transition to aggregate treatment as a change in method of accounting with an accompanying spread in reporting the second inclusion under section 481.

with respect to some, but not all, of the CFCs that are owned by the domestic partnership.

The result described by the comment (the possibility of a U.S. shareholder partner having, in one of its taxable years, a distributive share of a partnership's section 951(a) inclusion with respect to a CFC for one taxable year of the CFC as well as the U.S. shareholder partner's own section 951(a) inclusion with respect to the CFC for the CFC's subsequent taxable year) is intended. In situations where a partnership and a partner have different taxable years, the partner can generally achieve deferral on its share of the partnership's income to the extent of the difference between its taxable year and the partnership's required taxable year. However, under the final regulations, because a domestic partnership is not treated as owning stock of a CFC within the meaning of section 958(a) for purposes of computing income inclusions with respect to a CFC under section 951 and section 951A, the applicable taxable year for income inclusions arising as a result of a domestic partnership's ownership of the CFC is the U.S. shareholder partner's taxable year, not the partnership's taxable year. As a result, the final regulations eliminate any deferral of income inclusions under section 951 and section 951A for a U.S. shareholder partner with respect to any CFC owned by the U.S. shareholder partnership. This elimination of a U.S. shareholder partner's deferral with respect to income of any CFC owned by the U.S. shareholder partnership, combined with the partner's existing deferral of section 951 income inclusions before the application of the final regulations, causes the U.S. shareholder partner to recognize two years of section 951 income inclusions with respect to any CFC owned by the U.S. shareholder partnership in this transition taxable year.

The Treasury Department and the IRS considered whether the adoption of the aggregate approach should be viewed as a change in method of accounting under section 446 and, if so, whether an adjustment should be imposed under section 481. The Treasury Department and the IRS determined that the adoption of the aggregate approach is not a change in method of accounting. Accordingly, no adjustment under section 481 should be imposed.

Further, even if the adoption of the aggregate approach were considered to be a change in accounting method, the Treasury Department and the IRS do not believe imposing an adjustment under section 481 would be appropriate as part of such change. Section 481(a) adjustments are intended to prevent the permanent duplication or omission of income or expense that would otherwise arise as a result of a change in accounting method. However, the change to the aggregate approach under section 958 does not give rise to an omission or duplication of any item of income or expense. Under the prior entity approach, the domestic partnership would be treated as the foreign corporation's owner under section 958(a) and would take into account its applicable section 951 inclusion in its taxable year in which or with which such foreign corporation's taxable year ends. The partnership's section 951 inclusion would, in turn, be included in each partner's distributive share and would be recognized by each partner in the partner's taxable year in which or with which the partnership's taxable year ends.

By contrast, under the new aggregate approach, each U.S. shareholder partner of the partnership will be treated as an owner of the foreign corporation under section 958(a). As a result, each partner will have its own section 951 inclusion for the foreign corporation's taxable years beginning on or after January 25, 2022 and will recognize the section 951 inclusion in its taxable year in which or with which the foreign corporation's taxable year ends.[2] Therefore, the partners would not have a permanent duplication or omission of income or expense that would otherwise arise as a result of a change in accounting method and require a section 481(a) adjustment.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (''PRA'') generally requires that a federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

There are no information collection requirements associated with these final regulations.

III. Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The final regulations may affect a substantial number of small entities, but the economic impact is not likely to be significant. These regulations treat domestic partnerships as an aggregate of their partners for purposes of section 951, which reduces the burden on taxpayer partners that are not U.S. shareholders of a CFC owned by a partnership because these partners are no longer subject to section 951 inclusions with respect to CFCs held by the partnership. The regulations may also reduce burden on domestic partnerships that hold CFCs because these partnerships are no longer required to calculate their partners' distributive share of the partnerships' section 951 inclusions, which will likely lower their compliance costs. In addition, the regulations do not impose a collection of information burden on any person, including small entities.

The Treasury Department and the IRS estimate that approximately 7,500 U.S. partnerships that own CFCs e-filed at least one Form 5471 as Category 4 or 5 filers in 2018.[3] These partnerships had approximately 1.75 million domestic and foreign partners. To estimate the impact of the final regulations related to domestic partnerships on small entities, the Treasury Department and the IRS reviewed the percentage of filers that own CFCs by class size based on gross receipts. For 2018, the smaller size classes constituted a relatively small fraction of filers that own CFCs, suggesting that many domestic small business entities would be unaffected by these regulations. Further, domestic partnerships should only constitute a

[2] In the first taxable year to which the aggregate approach applies, the U.S. shareholder partner could in certain cases have two section 951 inclusions: (1) Its distributive share of the partnership's section 951 inclusion for the CFC's last taxable year that begins before January 25, 2022, and (2) its own section 951 inclusion for the CFC's first taxable year beginning on or after January 25, 2022. However, these inclusions represent subpart F income with respect to two different taxable years of the CFC. Therefore, there is no duplication or omission of the CFC's subpart F income to the U.S. shareholder partner.

[3] Data are from IRS's Research, Applied Analytics, and Statistics division based on data available in the Compliance Data Warehouse. Category 4 filer includes a U.S. person who had control of a foreign corporation during the annual accounting period of the foreign corporation. Category 5 includes a U.S. shareholder who owns stock in a foreign corporation that is a CFC and who owned that stock on the last day in the tax year of the foreign corporation in that year in which it was a CFC. For full definitions, see *https://www.irs.gov/pub/irs-pdf/i5471.pdf.*

portion of the smaller size classes of filers that own CFCs.

Consequently, the Treasury Department and the IRS have determined that the final regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities.

IV. Section 7805(f)

Pursuant to section 7805(f), the proposed regulations preceding the final regulations (the 2019 proposed regulations) were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Drafting Information

The principal author of these regulations is Edward J. Tracy of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805.

* * * * *

■ **Par. 2.** Section 1.951–1 is amended by:
■ 1. Adding paragraph (a)(4);
■ 2. Removing paragraph (h);
■ 3. Redesignating paragraph (i) as paragraph (h); and
■ 4. Removing the last sentence of newly redesignated paragraph (h).

The addition reads as follows:

§ 1.951–1 Amounts included in gross income of United States shareholders.

(a) * * *

(4) See § 1.958–1(d) for rules regarding the ownership of stock of a foreign corporation through a domestic partnership for purposes of section 951 and for purposes of any provision that specifically applies by reference to section 951 or the regulations in this part under section 951.

* * * * *

■ **Par. 3.** Section 1.951A–1 is amended by revising paragraph (e) to read as follows:

§ 1.951A–1 General provisions.

* * * * *

(e) *Stock owned through domestic partnerships.* See § 1.958–1(d) for rules regarding the ownership of stock of a foreign corporation through a domestic partnership for purposes of section 951A and for purposes of any provision that specifically applies by reference to section 951A or the section 951A regulations.

* * * * *

■ **Par. 4.** Section 1.956–1 is amended by:
■ 1. Adding a sentence at the end of paragraph (a)(1);
■ 2. Removing the last sentence of paragraph (a)(2)(i);
■ 3. Removing paragraphs (a)(2)(iii) and (a)(3)(iv);
■ 4. Redesignating paragraph (a)(3)(v) as paragraph (a)(3)(iv);
■ 5. Revising the newly redesignated paragraph (a)(3)(iv) heading; and
■ 6. Adding a sentence at the end of paragraph (g)(4).

The additions and revision read as follows:

§ 1.956–1 Shareholder's pro rata share of the average of the amounts of United States property held by a controlled foreign corporation.

(a) * * * (1) * * * See § 1.958–1(d) for rules regarding the ownership of stock of a foreign corporation through a domestic partnership for purposes of section 956(a) and for purposes of any provision that specifically applies by reference to section 956(a) or the regulations in this part under section 956 that relate to section 956(a).

* * * * *

(3) * * *

(iv) *Example 4.* * * *

* * * * *

(g) * * *

(4) * * * For taxable years of controlled foreign corporations beginning before January 25, 2022, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see § 1.956–1(a)(2)(i) and (iii) and (a)(3)(iv) as in effect and contained in 26 CFR part 1, as revised April 1, 2021.

* * * * *

■ **Par. 5.** Section 1.958–1 is amended by:
■ 1. Redesignating paragraph (d) as paragraph (f); and
■ 2. Adding a new paragraph (d) and reserved paragraph (e).

The additions read as follows:

§ 1.958–1 Direct and indirect ownership of stock.

* * * * *

(d) *Stock of foreign corporations owned through domestic partnerships*—(1) *In general.* Except as otherwise provided in paragraph (d)(2) of this section, for purposes of sections 951, 951A, and 956(a), and for purposes of any provision that specifically applies by reference to any of such sections or the regulations in this part under section 951, 951A, or 956 (but only as the regulations in this part under section 956 relate to section 956(a)), a domestic partnership is not treated as owning stock of a foreign corporation

within the meaning of section 958(a). For purposes of determining the persons that own stock of the foreign corporation within the meaning of section 958(a) when the preceding sentence applies, stock of a foreign corporation owned by a domestic partnership is treated in the same manner as stock of a foreign corporation owned by a foreign partnership under section 958(a)(2) and paragraph (b) of this section.

(2) *Non-application for certain purposes.* Paragraph (d)(1) of this section does not apply for purposes of—

(i) Determining whether any United States person is a United States shareholder (as defined in section 951(b));

(ii) Determining whether any foreign corporation is a controlled foreign corporation (CFC) (as defined in section 957(a));

(iii) Applying section 956(c) and (d);

(iv) Applying section 1248; or

(v) Determining whether any United States shareholder is a controlling domestic shareholder (as defined in § 1.964–1(c)(5)).

(3) *Examples.* The following examples illustrate the application of this paragraph (d).

(i) *Example 1*—(A) *Facts.* USP, a domestic corporation, and Individual A, a United States citizen unrelated to USP, own 95% and 5%, respectively, of PRS, a domestic partnership. PRS owns 100% of the single class of stock of FC, a foreign corporation.

(B) *Analysis*—(*1*) *United States shareholder and CFC determinations.* Under paragraphs (d)(2)(i) and (ii) of this section, respectively, the determination of whether PRS, USP, and Individual A (each a United States person) are United States shareholders of FC, and whether FC is a controlled foreign corporation, is made without regard to paragraph (d)(1) of this section. PRS, a United States person, owns 100% of the total combined voting power or value of the FC stock within the meaning of section 958(a). Accordingly, PRS is a United States shareholder under section 951(b), and FC is a controlled foreign corporation under section 957(a). USP is also a United States shareholder of FC because it owns 95% of the total combined voting power or value of the FC stock under sections 958(b) and 318(a)(2)(A). Individual A, however, is not a United States shareholder of FC because Individual A owns only 5% of the total combined voting power or value of the FC stock under sections 958(b) and 318(a)(2)(A).

(*2*) *Application of sections 951 and 951A.* Under paragraph (d)(1) of this section, for purposes of sections 951 and 951A, PRS is not treated as owning (within the meaning of section 958(a)) the FC stock; instead, for purposes of determining the persons that own the FC stock within the meaning of section 958(a), the FC stock is treated as if it were owned by a foreign partnership under paragraph (b) of this section. Therefore, for purposes of sections 951 and 951A, USP is treated as owning 95% of the FC stock under section 958(a), and Individual A is treated as owning 5% of the FC stock under section 958(a). USP is a United States shareholder of FC, and therefore USP determines its income inclusions under sections 951 and 951A directly with respect to FC based on its ownership of FC stock under section 958(a). However, because Individual A is not a United States shareholder of FC, Individual A does not have an income inclusion under section 951 with respect to FC or a pro rata share of any amount of FC for purposes of section 951A. This is the case even though PRS is a United States shareholder of FC.

(ii) *Example 2*—(A) *Facts.* USP, a domestic corporation, and Individual A, a United States citizen, own 90% and 10%, respectively, of PRS1, a domestic partnership. PRS1 and Individual B, a nonresident alien individual, own 90% and 10%, respectively, of PRS2, a domestic partnership. PRS2 owns 100% of the single class of stock of FC, a foreign corporation. USP, Individual A, and Individual B are unrelated to each other.

(B) *Analysis*—(*1*) *United States shareholder and CFC determinations.* Under paragraphs (d)(2)(i) and (ii) of this section, the determination of whether PRS1, PRS2, USP, and Individual A (each a United States person) are United States shareholders of FC, and whether FC is a controlled foreign corporation, is made without regard to paragraph (d)(1) of this section. PRS2 owns 100% of the total combined voting power or value of the FC stock within the meaning of section 958(a). Accordingly, PRS2 is a United States shareholder under section 951(b), and FC is a controlled foreign corporation under section 957(a). Under sections 958(b) and 318(a)(2)(A), PRS1 is treated as owning 90% of the FC stock owned by PRS2. Accordingly, PRS1 is also a United States shareholder under section 951(b). Further, under section 958(b)(2), PRS1 is treated as owning 100% of the FC stock for purposes of determining the FC stock treated as owned by USP and Individual A under section 318(a)(2)(A). Therefore, USP is treated as owning 90% of the FC stock under section 958(b) (100% × 100% × 90%), and Individual A is treated as owning 10% of the FC stock under section 958(b) (100% × 100% × 10%). Accordingly, both USP and Individual A are also United States shareholders of FC under section 951(b).

(*2*) *Application of sections 951 and 951A.* Under paragraph (d)(1) of this section, for purposes of sections 951 and 951A, PRS1 and PRS2 are not treated as owning (within the meaning of section 958(a)) the FC stock; instead, for purposes of determining the persons that own the FC stock within the meaning of section 958(a), as the FC stock is treated as if it were owned by foreign partnerships under paragraph (b) of this section. Therefore, for purposes of determining the amount included in gross income under sections 951 and 951A, under section 958(a) USP is treated as owning 81% (100% × 90% × 90%) of the FC stock, and Individual A is treated as owning 9% (100% × 90% × 10%) of the FC stock. Because USP and Individual A are both United States shareholders of FC, USP and Individual A determine their respective inclusions under sections 951 and 951A directly with respect to FC based on their ownership of FC stock under section 958(a). This is the case even though PRS2 is a United States shareholder of FC.

(iii) *Example 3*—(A) *Facts.* Individual A, a United States citizen, Individual B, a United States citizen unrelated to Individual A, and Individual C, a foreign person unrelated to both Individuals A and B, own 10%, 5%, and 85%, respectively, of PRS, a domestic partnership. PRS owns 100% of the single class of stock of FC, a foreign corporation. FC holds an account receivable from PRS that constitutes an obligation of a United States person within the meaning of section 956(c)(1)(C) and § 1.956–2(a)(1)(iii).

(B) *Analysis*—(*1*) *United States shareholder and CFC determinations.* Under paragraphs (d)(2)(i) and (ii) of this section, respectively, the determination of whether PRS, Individual A, and Individual B (each a United States person) are United States shareholders of FC, and whether FC is a controlled foreign corporation, is made without regard to paragraph (d)(1) of this section. PRS, a United States person, owns 100% of the total combined voting power or value of the FC stock within the meaning of section 958(a). Accordingly, PRS is a United States shareholder under section 951(b), and FC is a controlled foreign corporation under section 957(a). Individual A is also a United States shareholder of FC because it owns 10% of the total combined voting power or

value of the FC stock under sections 958(b) and 318(a)(2)(A). Individual B, however, is not a United States shareholder of FC because Individual B owns only 5% of the total combined voting power or value of the FC stock under sections 958(b) and 318(a)(2)(A).

(*2*) *Application of section 956(a).* Under paragraph (d)(1) of this section, for purposes of section 956(a), PRS is not treated as owning (within the meaning of section 958(a)) the FC stock; instead, for purposes of determining the persons that own the FC stock within the meaning of section 958(a), as the FC stock is treated as if it were owned by a foreign partnership under paragraph (b) of this section. Therefore, for purposes of section 956(a), under section 958(a) Individual A is treated as owning 10% of the FC stock, and Individual B is treated as owning 5% of the FC stock. Individual A is a United States shareholder of FC, and therefore Individual A determines the amount it must include in gross income under section 951(a)(1)(B) by reason of the PRS obligation held by FC based on its ownership of FC stock under section 958(a) as determined under paragraph (d)(1) of this section. However, because Individual B is not a United States shareholder of FC, Individual B does not have an amount to include in income under sections 956(a) and 951(a)(1)(B).

(*3*) *Application of section 956(c) and (d).* Under paragraph (d)(2)(iii) of this section, for purposes of section 956(c) and (d), the determination of whether FC holds United States property is made without regard to paragraph (d)(1) of this section. Therefore, PRS is treated as owning stock of FC within the meaning of section 958(a) for purposes of determining the amount of United States property held by FC arising from its note receivable from PRS.

(4) *Applicability dates*—(i) *Paragraphs (d)(1) through (3) of this section.* Paragraphs (d)(1) through (3) of this section apply to taxable years of foreign corporations beginning on or after January 25, 2022, and to taxable years of United States persons in which or with which such taxable years of foreign corporations end. For taxable years of a foreign corporation that precede the taxable years described in the preceding sentence, a domestic partnership may apply paragraphs (d)(1) through (3) of this section in their entirety to taxable years of a foreign corporation beginning after December 31, 2017, and to taxable years of the domestic partnership in which or with which such taxable years of the foreign corporation end, provided that the partnership, its partners that are United States shareholders of the foreign corporation, and other domestic partnerships that bear relationships described in section 267(b) or 707(b) to the partnership (and their United States shareholder partners) consistently apply paragraphs (d)(1) through (3) of this section with respect to all foreign corporations whose stock the domestic partnerships own within the meaning of section 958(a) (determined without regard to paragraph (d)(1) of this section).

(ii) *Rules applicable before* January 25, 2022. For taxable years of foreign corporations beginning before January 25, 2022, and to taxable years of United States persons in which or with which such taxable years of foreign corporations end, see §§ 1.951–1(h) and 1.951A–1(e) as in effect and contained in 26 CFR part 1, as revised April 1, 2021.

(e) [Reserved]

* * * * *

■ **Par. 6.** Section 1.1502–51 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 1.1502–51 Consolidated section 951A.

* * * * *

(b) * * * In addition, see § 1.951A–1(e) (cross-referencing § 1.958–1(d)).

* * * * *

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: December 8, 2021.

Lily Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2022–00066 Filed 1–24–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0031]

RIN 1625–AA00

Safety Zone; Potomac River, Between Charles County, MD, and King George County, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of persons, and the marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge, which will occur from 8 p.m. on January 22, 2022, through 8 p.m. on February 4, 2022. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective without actual notice from January 25, 2022, through 8 p.m. on February 4, 2022. For the purposes of enforcement, actual notice will be issued from 8 p.m. on January 22, 2022, until January 25, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0031 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
§ Section
TFR Temporary Final Rule
U.S.C. United States Code

II. Background Information and Regulatory History

On January 14, 2022, Skanska-Corman-McLean, Joint Venture notified the Coast Guard that the company will be setting structural steel sections across the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge. The bridge contractor stated the work required to set structural steel across the channel, originally scheduled to occur in November 2021, then rescheduled to December 2021, and again rescheduled to January 3–15, 2022, was scheduled to occur January 11–22, 2022. However, unexpected mechanical issues on the large crane required to perform the work halted operations and caused additional delays. The work is now scheduled to occur from January 22, 2022, through February 4, 2022.

The work described by the contractor requires the movement in and anchoring at multiple points of a large crane barge within the federal navigation channel.

This crane can accommodate all of the steel to be hoisted and placed, which will streamline the operation by avoiding multiple reloads of steel and reducing the time in the channel by multiple days. This operation will impede vessels requiring the use of the channel. Note, the Coast Guard has previously issued other temporary safety zones at this location for placement of fender ring elements in association with construction of the new bridge (USCG–2021–0127; USCG–2021–0650; USCG–2021–0745; USCG–2021–0906; and USCG–2022–0021).

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Construction operations involving large crane heavy lifts at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge must occur within the federal navigation channel. Immediate action is needed to respond to the potential safety hazards associated with bridge construction. Hazards from the construction operations include low-hanging or falling ropes, cables, large piles and cement cast portions, dangerous projectiles, and or other debris. We must establish this safety zone by January 22, 2022 to guard against these hazards.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge to be conducted within the federal navigation channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with bridge construction starting January 22, 2022 will be a safety concern for anyone within the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge construction site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being constructed.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 p.m. on January 22, 2022, through 8 p.m. on February 4, 2022. The safety zone will cover all navigable waters of the Potomac River encompassed by a line connecting the following points beginning at 38°21′50.96″ N, 076°59′22.04″ W, thence south to 38°21′43.08″ N, 076°59′20.55″ W, thence west to 38°21′41.00″ N, 076°59′34.90″ W, thence north to 38°21′48.90″ N, 076°59′36.80″ W, and east back to the beginning point, located between Charles County, MD and King George County, VA.

The duration of the zone is intended to protect personnel and the marine environment in these navigable waters while structural steel is being set across the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge.

Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Maryland-National Capital Region or a designated representative.

The COTP Maryland-National Capital Region will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a).

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size and duration of the safety zone. The temporary safety zone is approximately 450 yards in width and 270 yards in length. We anticipate that there will be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted, but bridge project personnel have been conducting outreach throughout the project in order to coordinate with those vessels. Vessel traffic not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the east or the west of the federal navigation channel, as similar vertical clearance and water depth exist under the next bridge span to the east and west. This safety zone will impact a small designated area of the Potomac River for 13 days, but coincides with the non-peak season for recreational boating.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting 13 total days that will prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T05–0031 to read as follows:

§ 165.T05–0031 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21′50.96″ N, 076°59′22.04″ W, thence south to 38°21′43.08″ N, 076°59′20.55″ W, thence west to 38°21′41.00″ N, 076°59′34.90″ W, thence north to 38°21′48.90″ N, 076°59′36.80″ W, and east back to the beginning point, located between Charles County, MD and King George County, VA. These coordinates are based on datum NAD 83.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

Marine equipment means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, except for marine equipment, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* The section will be enforced from 8 p.m. on January 22, 2022, through 8 p.m. on February 4, 2022.

Dated: January 19, 2022.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-National Capital Region.

[FR Doc. 2022–01415 Filed 1–24–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 226

[DOCKET ID ED–2021–OESE–0147]

RIN 1810–AB62

Charter School Programs (CSP) State Charter School Facilities Incentive Grants Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final rule.

SUMMARY: The Department of Education (Department) amends the regulations that govern the State Charter School Facilities Incentive Program to align the regulations with the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), and the Tax Cut and Jobs Act of 2017.

DATES: These regulations are effective January 25, 2022.

FOR FURTHER INFORMATION CONTACT: Clifton Jones, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E211, Washington, DC 20202. Telephone: (202)205–2204. Email: *clifton.jones@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department is making technical changes to its regulations in 34 CFR part 226, to align them with the ESEA, as amended by the ESSA. The ESSA, which was signed into law on December 10, 2015, reauthorized the ESEA, previously amended by the No Child Left Behind Act of 2001 (NCLB). We are also making changes to reflect the repeal of the Qualified Zone Academy Bonds (QZAB) under the Tax Cut and Jobs Act of 2017. These final regulations update ESEA citations, remove obsolete references, and make other technical changes in 34 CFR part 226, specifically §§ 226.4(a), 226.11(a), 226.12(d)(3) and (e), 226.13, and 226.14.

This final rule is separate and apart from any notice of proposed priorities, requirements, selection criteria, or definitions that we may publish for the State Charter School Facilities Incentive Program.

Part 226—State Charter School Facilities Incentive Program

Statute: Section 4310 of the ESEA.

Current Regulations: Section 226.4(a) specifies the definitions that apply to the State Charter School Facilities Incentive program. Section 226.4(a) states that ''charter school'' is defined in section 5210 of the ESEA.

New Regulations: In § 226.4(a) of these final regulations, we update the citation for the definition of ''charter school'' to section 4310 of the ESEA.

Reasons: Amendments to the ESEA by the ESSA resulted in a change to the citation for the statute's definition section. The definitions for the program are now in section 4310 of the ESEA, as amended by ESSA.

Statute: Section 5202(e) of the ESEA.

Current Regulations: Section 226.11(a) states that the Secretary evaluates applications, in part, on the basis of competitive preference priorities in § 226.13. Section 226.13 provides that the Secretary shall award additional points under the four statutory funding priorities in section 5202(e)(2) and (3)(A), (B), and (C) of the ESEA of.

New Regulations: In § 226.11(a) of these final regulations, we remove the reference to § 226.13.

Reasons: The ESSA amendments to the ESEA removed section 5202(e) from the statute.

Statute: Section 4304 of the ESEA.

Current Regulations: Section 226.12 establishes the selection criteria that the Secretary uses in evaluating applications for CSP State Charter Schools Facilities Incentive Grants. Under selection criterion (d)(3), the Secretary evaluates the extent to which the applicant's non-Federal share exceeds the minimum percentages of the per-pupil facilities aid program in section 5205(b)(2)(C) of the ESEA.

New Regulations: Section 226.12(d)(3) of these final regulations cites section 4304(k)(2)(C) of the ESEA, as amended by the ESSA, when referencing the extent to which the non-Federal share exceeds the minimum percentages of the per-pupil facilities aid program.

Reasons: The current citation, section 5205(b)(2)(C), is from the ESEA, as amended by NCLB. In these final regulations, we update the citation in § 226.12(d)(3) to section 4304(k)(2)(C) to reference the ESEA, as amended by the ESSA.

Statute: Section 13404 of the Tax Cuts and Jobs Act of 2017.

Current Regulations: Section 226.12 establishes the selection criteria that the Secretary uses in evaluating applications for CSP State Charter Schools Facilities Incentive Grants. Under § 226.12(e), the Secretary evaluates the State's experience in addressing the facility needs of charter schools. Specifically, § 226.12(e) references experience in using QZABs as an example of how the State could demonstrate experience addressing facility needs of charter schools.

New Regulations: In § 226.12(e), we are removing reference to the use of QZABs as an example of how the State could demonstrate experience addressing the facility needs of charter schools.

Reasons: The Tax Cuts and Jobs Act enacted in December 2017 repealed the States' authority to issue tax credit bonds, such as QZABs, after December 31, 2017.

Statute: Section 5202(e) of the ESEA.

Current Regulations: Section 226.13 establishes statutory funding priorities that the Secretary may use in making awards. Specifically, it lists the priorities described in section 5202(e)(2) and (3)(A), (B), and (C) of the ESEA: (a) Periodic review and evaluation; (b) number of high-quality charter schools; (c) one authorized public chartering agency other than a local educational agency, or an appeals process; and (d) high degree of autonomy.

New Regulations: We are removing § 226.13.

Reasons: The ESSA amendments to the ESEA removed section 5202(e) from the statute.

Statute: Title I, Section 1111 of the ESEA.

Current Regulations: Section 226.14—titled ''What other funding priorities may the Secretary use in making a grant award?''—provides that the Secretary may award additional points under competitive preference priorities related to the capacity of charter schools to offer public school choice in those communities with the greatest need based on three factors. The three factors are: (1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under title I of the ESEA; (2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform poorly on State academic assessments; and (3) The extent to which the applicant would target services to communities with large proportions of low-income students.

New Regulations: We are removing the word ''other'' from the section title. Additionally, we are revising the first factor, which is defined in § 226.14(a)(1), to refer to the extent to which the applicant targets services to geographic areas in which a large portion or number of public schools have been identified for comprehensive

support and improvement or targeted support and improvement under Title I of the ESEA, as amended by the ESSA.

Reasons: The ESSA amendments to the ESEA removed the statutory priorities established in section 5202(e), leaving one set of funding priorities; hence the word ''other'' in the section heading is not needed. The ESSA amendments to the ESEA also revised the categories of schools that States must identify under Title I, section 1111. States no longer identify schools for improvement, corrective action, or restructuring; instead, States identify schools for comprehensive support and improvement or targeted support and improvement.

Waiver of Proposed Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). There is good cause here for waiving rulemaking because these regulations make technical changes only to align with current law and do not establish substantive policy.

The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, because these final regulations are merely technical, there is good cause to make them effective on the day they are published.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not significant and, therefore, not subject to review by OMB under Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action is not significant and would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action.

Potential Costs and Benefits

The Department believes that this final rule does not impose costs because it makes only technical changes that do not impose additional burden. Moreover, any costs associated with this rule are outweighed by the benefit of providing necessary clarification.

Need for Regulatory Action

The Secretary amends the State Charter School Facilities Incentive Grants program regulations to reflect changes made to the program statute by ESSA. These technical amendments are needed to provide clarity in program administration for prospective applicants and the public.

Net Budget Impacts

The Department estimates that these final regulations will add an additional cost of $0.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

Paperwork Reduction Act of 1995

The final regulations do not create any new information collection requirements.

Intergovernmental Review

The State Charter School Facilities Incentive Grants Program is subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 226

Education, Educational facilities, Grant programs—education, Reporting and recordkeeping requirements, Schools.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 226 of title 34 of the Code of Federal Regulations as follows:

PART 226—STATE CHARTER SCHOOL FACILITIES INCENTIVE PROGRAM

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

Authority: 20 U.S.C. 1221e–3; 7221d(b), unless otherwise noted.

§ 226.4 [Amended]

■ 2. Section 226.4 is amended in paragraph (a) introductory text by removing ''5210'' and adding in its place ''4310''.

§ 226.11 [Amended]

■ 3. Section 226.11 is amended in paragraph (a) by removing ''§ 226.13 and''.

■ 4. Section 226.12 is amended:

■ a. In paragraph (d)(3), by removing ''5205(b)(2)(C)'' and adding, in its place, ''4304(k)(2)(C)''; and

■ b. By revising paragraph (e).

The revision reads as follows:

§ 226.12 What selection criteria does the Secretary use in evaluating an application for a State Charter School Facilities Incentive program grant?

* * * * *

(e) *State experience.* The experience of the State in addressing the facility needs of charter schools through various means, including providing per-pupil aid and access to State loan or bonding pools.

* * * * *

§ 226.13 [Removed and Reserved]

■ 5. Section 226.13 is removed and reserved.

§ 226.14 [Amended]

■ 6. Section 226.14 is amended:

■ A. In the section heading, by removing ''other''.

■ B. In paragraph (a)(1), by removing ''improvement, corrective action, or restructuring under title I of the ESEA'' and adding, in its place, ''comprehensive support and improvement or targeted support and improvement under the ESEA''.

[FR Doc. 2022–01336 Filed 1–24–22; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0362; FRL–9238–02–R4]

Air Plan Approval; FL; Removal of Motor Vehicle Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes to a State Implementation Plan (SIP) revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), in a letter dated July 2, 2020. Specifically, EPA is approving the removal of rules prohibiting tampering with motor vehicle air pollution control equipment and rules concerning visible emissions from motor vehicles. These rules were previously approved into the SIP even though they were not required by the Clean Air Act (CAA or Act) to be in the SIP. EPA is approving the removal of the tampering rules and visible emission rules from the federally approved SIP because removing the requirements is consistent with the CAA and applicable regulations.

DATES: This rule is effective February 24, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0362. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9222. Ms. Kelly Sheckler can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Florida submitted a SIP revision, through a letter dated July 2, 2020, to update the State's air quality rules, specifically, for the removal of Chapters 62–243 and 62–244 from the Florida SIP. The first rule relates to anti-tampering measures that restricted the removal or disabling of specific motor vehicle air pollution control devices and prohibited the sale, lease, or transfer of motor vehicles by licensed motor vehicle dealers. The second rule relates to the prohibition of operating either gasoline or diesel-powered vehicles on public roads that emit visible emissions for more than five continuous seconds. Chapters 62–243 and 62–244 implement certain ''on-road'' prohibitions of Florida Statutes (F.S.) Section 316.2935.

The purpose of Chapter 62–243, *Tampering with Motor Vehicles Air Pollution Control Equipment,* is to prohibit licensed motor vehicle dealers from offering for sale, lease or transfer, vehicles that had the emission control components tampered with or removed. Chapter 62–244, *Visible Emissions from Motor Vehicles,* implements requirements relating to the operation of a motor vehicle on public roads in the state of Florida that emit visible emissions from the exhaust tailpipe for

more than a continuous period of five minutes. These rules specifically were intended to give guidance to law enforcement officers on how to issue noncriminal traffic citations to anyone operating a motor vehicle emitting visible emissions from the vehicle's tailpipe on public roads.

On November 22, 2021, EPA published a notice of proposed rulemaking (NPRM) to approve the aforementioned changes to Florida's SIP. See 86 FR 66255. EPA's November 22, 2021, NPRM includes further detail on the changes made in Florida's July 2, 2020, submittal and EPA's rationale for approving these changes to the SIP. Comments were due on the November 22, 2021, NPRM on or before December 22, 2021. EPA received no comments on the November 22, 2021, NPRM. Therefore, EPA is approving the changes in this final action.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. EPA is finalizing the removal of provisions from the Florida SIP regarding the Motor Vehicle Rules at Chapter 62–243, F.A.C.—*Tampering with Motor Vehicle Air Pollution Control Equipment* and Chapter 62–244, F.A.C.—*Visible Emissions from Motor Vehicles,* which are incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made and will continue to make the SIP generally available at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).[1]

III. Final Action

EPA is removing Chapter 62–243, F.A.C.—*Tampering with Motor Vehicle Emission Control Equipment,* and Chapter 62–244, F.A.C.—*Visible Emissions from Mobile Sources,* in their entirety, from the Florida SIP. EPA is taking final action to approve these changes to the SIP because they are consistent with the CAA.

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 Act and applicable Federal regulations. *See* 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 merely approves 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added 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. EPA will submit a report containing this action 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 publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

§ 52.520 [Amended]

■ 2. In § 52.520(c), the table is amended by:

■ a. Removing the heading ''Chapter 62–243 Tampering With Motor Vehicle Air Pollution Control Equipment'' and the entries ''62–243.100,'' ''62–243.200,'' ''62–243.300,'' ''62–243.400,'' ''62–243.500,'' ''62–243.600,'' and ''62–243.700;'' and

■ b. Removing the heading ''Chapter 62–244 Visible Emissions From Motor Vehicles'' and the entries ''62–244.100,'' ''62–244.200,'' ''62–244.300,'' ''62–

[1] *See* 62 FR 27968 (May 22, 1997).

244.400,'' ''62–244.500,'' and ''62–244.600.''

[FR Doc. 2022–01303 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0033; FRL–9278–02–R4]

Air Plan Approval; North Carolina; Mecklenburg: Source Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg County Local Implementation Plan (LIP). The revision was submitted through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Pollution Control (MCAQ), via a letter dated April 24, 2020, which was received by EPA on June 19, 2020. This SIP revision includes changes to Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP regarding performance testing for stationary sources of air pollution. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective February 24, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2021–0033. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* 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. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached via electronic mail at *akers.brad@epa.gov* or via telephone at (404) 562–9089.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

The Mecklenburg LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County is now requesting that EPA approve changes to the LIP for, among other things, general consistency with the North Carolina SIP.[1] Mecklenburg County prepared three submittals in order to update the LIP and reflect regulatory and administrative changes that NCDAQ made to the North Carolina SIP since EPA's 1991 LIP approval.[2] The three submittals were submitted as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but later withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and also submitted the January 21, 2016, and January 14, 2019, updates. Due to an inconsistency with public notices at the local level, these submittals were withdrawn from EPA through the letter dated February 15, 2019. Mecklenburg County corrected this error, and NCDAQ submitted the updates to EPA in a submittal dated April 24, 2020.

This final rule modifies the LIP by revising, adding, and removing several rules related to the source testing rules, located in MCAPCO Article 2.0000, *Air Pollution and Control Regulations and Procedures.* The specific sections addressed in this final rule are Section 2.2600, *Source Testing,* Section 2.0900, *Volatile Organic Compounds,* and Rule 2.0501 of Section 2.0500, *Compliance with Emission Control Standards.*[3] The April 24, 2020, LIP revision first makes minor changes to recodify portions of Rules 2.0501 of Section 2.0500 and several rules in Section 2.0900. Next, the LIP revision removes Rule 2.0941, *Alternative Method for Leak Testing,* from the SIP, which in effect removes an alternative test for vapor leaks in gasoline tank trucks which is no longer available in Mecklenburg County. In addition, other changes modify the LIP by updating or incorporating new performance testing requirements, and by making other minor changes to language throughout the recodified rules for consistency. See EPA's November 26, 2021, notice of proposed rulemaking (NPRM) for further detail on these changes and EPA's rationale for approving them. *See* 86 FR 67412. EPA did not receive public comments on the November 26, 2021, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the following Mecklenburg County rules, with an effective date of June 1, 2008: Rule 2.0501, *Compliance with Emission Control Standards;*[4] Rule 2.0912, *General Provisions on Test Methods and Procedures;* Rule 2.0943, *Synthetic Organic Chemical and Polymer Manufacturing;* Rule 2.0945, *Petroleum Dry Cleaning;* Rule 2.2602, *General Provisions on Test Methods and Procedures;*[5] Rule 2.2603, *Testing Protocol;* Rule 2.2604, *Number of Test Points;* Rule 2.2605, *Velocity and Volume Flow Rate;* Rule 2.2606, *Molecular Weight;* Rule 2.2607, *Determination of Moisture Content;* Rule 2.2608, *Number of Runs and Compliance Determination;* Rule 2.2610, *Opacity;* Rule 2.2612, *Nitrogen Oxide Testing Methods;* Rule 2.2613,

[1] Hereinafter, the terms ''North Carolina SIP'' and ''SIP'' refer to the North Carolina regulatory portion of the North Carolina SIP (*i.e.,* the portion that contains SIP-approved North Carolina regulations).

[2] The Mecklenburg County, North Carolina revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals—one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

[3] Additionally, EPA notes that NCDAQ did not request EPA approval into the LIP of several Section 2.2600 rules, including: Rules 2.2616, *Fluorides;* 2.2618, *Mercury;* 2.2619, *Arsenic, Beryllium, Cadmium, Hexavalent Chromium;* and 2.2620, *Dioxins and Furans.* Provisions for these pollutants were not previously included in the Mecklenburg LIP.

[4] Except for the addition of paragraph 2.0501(e), with an effective date of June 1, 2008; and except for changes to remove and recodify the prefatory text at 2.0501(c) and for subparagraphs (c)(3), (c)(4), (c)(5), (c)(6), (c)10, (c)(15), (c)(16), and (c)(18), which will remain unchanged with a state effective date of June 14, 1990. Because EPA is acting on other portions of Rule 2.0501, which includes moving former paragraph (e) to paragraph (c) with an effective date of June 1, 2008, there will be two paragraphs 2.0501(c), with different state effective dates. EPA will consider the remaining portions of the June 14, 1990 version of paragraph (c) in a separate action.

[5] Except for paragraph 2.2602(i), which corresponds to existing 2.0501(c)(18) in the LIP.

Volatile Organic Compound Testing Methods; Rule 2.2614, *Determination of VOC Emission Control System Efficiency;* and Rule 2.2615, *Determination of Leak Tightness and Vapor Leaks.* EPA is also incorporating by reference Rule 2.0901, *Definitions,* with an effective date of January 1, 2009. Also in this document, EPA is finalizing the removal of the following Mecklenburg County rules from the Mecklenburg portion of the North Carolina State Implementation Plan, which are incorporated by reference in accordance with the requirements of 1 CFR part 51: Rule 2.0913, *Determination of Volatile Content of Surface Coatings;* Rule 2.0914, *Determination of VOC Emission Control System Efficiency;* Rule 2.0915, *Determination of Solvent Metal Cleaning VOC Emissions;* Rule 2.0916, *Determination: VOC Emissions from Bulk Gasoline Terminals;* Rule 2.0939, *Determination of Volatile Organic Compound Emissions;* Rule 2.0940, *Determination of Leak Tightness and Vapor Leaks;* Rule 2.0941, *Alternative Method for Leak Tightness;* and Rule 2.0942, *Determination of Solvent in Filter Waste.* EPA has made, and will continue to make the State Implementation Plan generally available at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, the revised materials as stated above, have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[6]

III. Final Action

EPA is approving the April 24, 2020, SIP revision to revise, add, and remove several source testing rules from the LIP, as described above. EPA believes these changes are consistent with the CAA, and this revision will not impact the national ambient air quality standards or interfere with any other applicable requirement of the Act.

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 Act and applicable Federal regulations. *See* 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 merely approves 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added 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. EPA will submit a report containing this action 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 publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation byreference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42.U.S.C. 7401 *et seq.*

Subpart II—North Carolina

■ 2. In § 52.1770, amend the table in paragraph (c)(3) by:
■ a. Removing the entries for ''Section 2.0501,'' ''Section 2.0901,'' and ''Section 2.0912'' and adding in their place entries for ''Rule 2.0501,'' ''Rule 2.0901,'' and ''Rule 2.0912,'' respectively;
■ b. Removing the entries for ''Section 2.0913,'' ''Section 2.0914,'' ''Section 2.0915,'' ''Section 2.0916,'' ''Section 2.0939,'' ''Section 2.0940,'' ''Section 2.0941,'' and ''Section 2.0942;''

[6] *See* 62 FR 27968 (May 22, 1997).

■ c. Removing the entries for ''Section 2.0943'' and ''Section 2.0945'' and adding in their place entries for ''Rule 2.0943'' and ''Rule 2.0945,'' respectively; and
■ d. Adding, at the end of the table, the heading ''Section 2.2600 Source Testing'' and entries for ''Rule 2.2602,'' ''Rule 2.2603,'' ''Rule 2.2604,'' ''Rule 2.2605,'' ''Rule 2.2606,'' ''Rule 2.2607,'' ''Rule 2.2608,'' ''Rule 2.2610,'' ''Rule 2.2612,'' ''Rule 2.2613,'' ''Rule 2.2614,'' and ''Rule 2.2615''.

The additions read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(3) EPA Approved Mecklenburg County Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Article 2.0000 Air Pollution Control Regulations and Procedures				
*	*	*	*	*
Section 2.0500 Emission Control Standards				
Rule 2.0501	Compliance With Emission Control Standards.	6/1/2008	1/25/2022, [Insert citation of publication].	Except for the addition of paragraph 2.0501(e); and except for changes to remove and recodify the prefatory text at 2.0501(c) and for subparagraphs (c)(3), (c)(4), (c)(5), (c)(6), (c)10, (c)(15), (c)(16), and (c)(18), which will remain unchanged with a state effective date of June 14, 1990. Because EPA is acting on other portions of Rule 2.0501, which includes moving former paragraph (e) to paragraph (c) with an effective date of June 1, 2008, there are two paragraphs 2.0501(c), with different state effective dates.
*	*	*	*	*
Section 2.0900 Volatile Organic Compounds				
Rule 2.0901	Definitions	1/1/2009	1/25/2022, [Insert citation of publication].	
*	*	*	*	*
Rule 2.0912	General Provisions on Test Methods and Procedures.	6/1/2008	1/25/2022, [Insert citation of publication].	
*	*	*	*	*
Rule 2.0943	Synthetic Organic Chemical and Polymer Manufacturing.	6/1/2008	1/25/2022, [Insert citation of publication].	
*	*	*	*	*
Rule 2.0945	Petroleum Dry Cleaning	6/1/2008	1/25/2022, [Insert citation of publication].	
*	*	*	*	*
Section 2.2600 Source Testing				
Rule 2.2602	General Provisions on Test Methods and Procedures.	6/1/2008	1/25/2022, [Insert citation of publication].	Except for paragraph 2.2602(i).
Rule 2.2603	Testing Protocol	6/1/2008	1/25/2022, [Insert citation of publication].	
Rule 2.2604	Number of Test Points	6/1/2008	1/25/2022, [Insert citation of publication].	
Rule 2.2605	Velocity and Volume Flow Rate.	6/1/2008	1/25/2022, [Insert citation of publication].	
Rule 2.2606	Molecular Weight	6/1/2008	1/25/2022, [Insert citation of publication].	
Rule 2.2607	Determination of Moisture Content.	6/1/2008	1/25/2022, [Insert citation of publication].	
Rule 2.2608	Number of Runs and Compliance Determination.	6/1/2008	1/25/2022, [Insert citation of publication].	

(3) EPA APPROVED MECKLENBURG COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Rule 2.2610	Opacity	6/1/2008	1/25/2022, [Insert citation of publication].	
Rule 2.2612	Nitrogen Oxide Testing Methods.	6/1/2008	1/25/2022, [Insert citation of publication].	
Rule 2.2613	Volatile Organic Compound Testing Methods.	6/1/2008	1/25/2022, [Insert citation of publication].	
Rule 2.2614	Determination of VOC Emission Control System Efficiency.	6/1/2008	1/25/2022, [Insert citation of publication].	
Rule 2.2615	Determination of Leak Tightness and Vapor Leaks.	6/1/2008	1/25/2022, [Insert citation of publication].	

* * * * *

[FR Doc. 2022–01302 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2021–0217; FRL–9290–02–R3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Determinations for Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving multiple state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for 14 major volatile organic compound (VOC) and/or nitrogen oxide (NO_X) emitting facilities pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rule action, EPA is approving source-specific (also referred to as ''case-by-case'' or CbC) RACT determinations or alternative NO_X emissions limits for sources at 14 major NO_X and VOC emitting facilities within the Commonwealth submitted by PADEP. These RACT evaluations were submitted to meet RACT requirements for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA) and EPA's implementing regulations.

DATES: This final rule is effective on February 24, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–EPA–R03–OAR–2021–0217. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov*, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ms. Gwendolyn Supplee, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2763. Ms. Supplee can also be reached via electronic mail at *supplee.gwendolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 2, 2021, EPA published a notice of proposed rulemaking (NPRM). 86 FR 41421. In the NPRM, EPA proposed approval of case-by-case RACT determinations or alternative NO_X emissions limits for sources 14 facilities, as EPA found that the RACT controls for these sources met the CAA RACT requirements for the 1997 and 2008 8-hour ozone NAAQS. PADEP submitted the SIP revisions for sources at these facilities on May 7, 2020.

Under certain circumstances, states are required to submit SIP revisions to address RACT requirements for both major sources of NO_X and VOC and any source covered by control technique guidelines (CTG) for each ozone NAAQS. Which NO_X and VOC sources in Pennsylvania are considered ''major,'' and are therefore subject to RACT, is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the ''major source'' definitions established under the CAA based on the area's current classification(s). In Pennsylvania, sources located in any ozone nonattainment areas outside of moderate or above are subject to source thresholds of 50 tons per year (tpy) because of the Ozone Transport Region (OTR) requirements in CAA section 184(b)(2).

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major source VOC and NO_X RACT requirements for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96–100, *Additional RACT Requirements for Major Sources of NO_X and VOCs* (the ''presumptive'' RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_X and VOC control measures in 25 Pa. Code 129.92–95, *Stationary Sources of NO_X and VOCs* (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO_X sources. The requirements of the RACT I rule remain as previously approved in Pennsylvania's SIP and continue to be

implemented as RACT.[1] On September 26, 2017, PADEP submitted a letter, dated September 22, 2017, which committed to address various deficiencies identified by EPA in PADEP's May 16, 2016 ''presumptive'' RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on the commitments PADEP made in its September 22, 2017 letter.[2] 84 FR 20274. In EPA's final conditional approval, EPA noted that PADEP would be required to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide NO_X emissions averaging plans approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval (*i.e.,* by May 9, 2020). Through multiple submissions between 2017 and 2020, PADEP has submitted to EPA for approval various SIP submissions to implement its RACT II case-by-case determinations and alternative NO_X emissions limits. This rule is based on EPA's review of one of these SIP revisions.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

To satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP submitted to EPA SIP revisions addressing alternative NO_X emissions limits and/or case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.98 or 129.99. Among the Pennsylvania RACT SIP revisions submitted by PADEP were case-by-case RACT determinations and alternative NO_X emissions limits for the existing emissions units at each of the major sources of NO_X and/or VOC that required a source-specific RACT determination or alternative NO_X emissions limits for major sources seeking such limits.

In PADEP's case-by-case RACT determinations, an evaluation was completed to determine if previously SIP-approved, case-by-case RACT emissions limits or operational controls (herein referred to as RACT I and contained in RACT I permits) were more stringent than the new RACT II presumptive or case-by-case requirements. If more stringent, the RACT I requirements will continue to apply to the applicable source. If the new case-by-case RACT II requirements are more stringent than the RACT I requirements, then the RACT II requirements will supersede the prior RACT I requirements.[3]

In PADEP's RACT determinations involving NO_X averaging, an evaluation was completed to determine that the aggregate NO_X emissions emitted by the air contamination sources included in the facility-wide or system-wide NO_X emissions averaging plan using a 30-day rolling average are not greater than the NO_X emissions that would be emitted by the group of included sources if each source complied with the applicable presumptive limitation in 25 Pa. Code 129.97 on a source-specific basis.

Here, EPA is approving SIP revisions pertaining to case-by-case RACT requirements and/or alternative NO_X emissions limits for sources at 14 major NO_X and/or VOC emitting facilities in Pennsylvania, as summarized in Table 1 in this document.

TABLE 1—FOURTEEN MAJOR NO_X AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO CASE-BY-CASE RACT II DETERMINATIONS UNDER THE 1997 AND 2008 8-HOUR OZONE NAAQS

Major source (county)	1-Hour ozone RACT source? (RACT I)	Major source pollutant (NO_X and/or VOC)	RACT II permit (effective date)
Dart Container Corporation of Pennsylvania—East Lampeter (Lancaster).	Yes	VOC	36–05117 (10/15/2020)
Dart Container Corporation of Pennsylvania—Leola (Lancaster).	Yes	NO_X and VOC	36–05015 (03/30/2020)
Latrobe Specialty Metals—A Carpenter Co (Westmoreland).	Yes	NO_X	65–00016 (02/26/2020)
ATI Flat Rolled Products Holdings, LLC (Westmoreland).	Yes	NO_X	65–00137
CONSOL Pennsylvania Coal Company, LLC (Greene).	Yes	VOC	30–00072L
IPSCO Koppel Tubular Corporation—IPSCO Ambridge (Beaver).	No	NO_X	04–00227
IPSCO Koppel Tubular Corporation—IPSCO Koppel (Beaver).	Yes	NO_X and VOC	04–00059 (03/16/2020)
MarkWest Liberty Bluestone Plant (Butler)	No	VOC	10–00368
York Group Inc.—Black Bridge Rd (York)	Yes	VOC	67–05014C
Omnova Solutions Inc—Jeannette Plant (Westmoreland).	Yes	VOC	65–00207 (02/06/2020)
Jessop Steel LLC—Washington Plant (Washington)	Yes	NO_X	63–00027 (03/11/2020)
Kawneer Commercial Windows LLC (Butler)	Yes	VOC	10–00267 (03/04/2020)
Tennessee Gas Pipeline Co., LLC, Marienville STA 307 (Forest).	Yes	NO_X and VOC	27–015A (12/07/2018)
Mack Truck—Macungie (Lehigh)	Yes	NO_X and VOC	39–00004 (04/03/2020)

[1] The RACT I Rule was approved by EPA into the Pennsylvania SIP on March 23, 1998. 63 FR 13789. Through this rule, certain source-specific RACT I requirements will be superseded by more stringent requirements. See Section II of the preamble to this final rule.

[2] On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA's approval of three provisions of Pennsylvania's presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club* v. *EPA,* 972 F.3d 290 (3d Cir. 2020). None of the sources in this final rule are subject to the presumptive RACT II provisions at issue in that *Sierra Club* decision.

[3] While the prior SIP-approved RACT I permit will remain part of the SIP, this RACT II rule will incorporate by reference the RACT II requirements through the RACT II permit and clarify the ongoing applicability of specific conditions in the RACT I permit.

The case-by-case RACT determinations submitted by PADEP consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a PADEP determination of what specific emissions limit or control measures satisfy RACT for that particular unit. The adoption of new, additional, or revised emissions limits or control measures to existing SIP-approved RACT I requirements were specified as requirements in new or revised federally enforceable permits (hereafter RACT II permits) issued by PADEP to the source. Similarly, PADEP's determinations of alternative NO_X emissions limits are included in RACT II permits. These RACT II permits have been submitted as part of the Pennsylvania RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permits submitted by PADEP are listed in the last column of Table 1 of this preamble, along with the permit effective date, and are part of the docket for this rule, which is available online at *https://www.regulations.gov,* Docket No. EPA–R03–OAR–2021–0217.[4] EPA is incorporating by reference in the Pennsylvania SIP, via the RACT II permits, source-specific RACT emissions limits and control measures and alternative NO_X emissions limits under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of NO_X and VOC emissions.

B. EPA's Final Action

PADEP's SIP revisions incorporate its determinations of source-specific RACT II controls for individual emission units at major sources of NO_X and/or VOC in Pennsylvania, where those units are not covered by or cannot meet Pennsylvania's presumptive RACT regulation or where included in a NO_X emissions averaging plan. After thorough review and evaluation of the information provided by PADEP in its SIP revision submittals for sources at 14 major NO_X and/or VOC emitting facilities in Pennsylvania, EPA found that: (1) PADEP's case-by-case RACT determinations and conclusions establish limits and/or controls on individual sources that are reasonable and appropriately considered technically and economically feasible controls; (2) PADEP's determinations on alternative NO_X emissions limits demonstrate that emissions under the averaging plan are equivalent to emissions if the individual sources were operating in accordance with the applicable presumptive limit; and (3) PADEP's determinations are consistent with the CAA, EPA regulations, and applicable EPA guidance.

PADEP, in its RACT II determinations, considered the prior source-specific RACT I requirements and, where more stringent, retained those RACT I requirements as part of its new RACT determinations. In the NPRM, EPA proposed to find that all the proposed revisions to previously SIP-approved RACT I requirements would result in equivalent or additional reductions of NO_X and/or VOC emissions. The revisions should not interfere with any applicable requirements concerning attainment of the NAAQS, reasonable further progress, or other applicable requirements under section 110(l) of the CAA.

Other specific requirements of the 1997 and 2008 8-hour ozone NAAQS case-by-case RACT determinations and alternative NO_X emissions limits and the rationale for EPA's action are explained more thoroughly in the NPRM, and its associated technical support document (TSD), and will not be restated here.

III. Public Comments and EPA Responses

EPA received three comments from three commenters on the August 2, 2021 NPRM. 86 FR 41421. A summary of the comments and EPA's response are discussed in this section. A copy of the comments can be found in the docket for this rule action.

Comment 1: The commenter claims that for the Mack Truck—Macungie facility to meet RACT II requirements, an economic and technical feasibility analysis must be conducted. The commenter identifies that such an analysis was not performed for sources at this facility and also appears to claim that compliance with CTGs is insufficient to meet RACT requirements. Therefore, the commenter states that EPA must require a technical and economic feasibility analysis for the sources at Mack Truck before RACT can be approved for this facility.

Response 1: Pennsylvania's RACT II regulations allow a source to meet RACT II requirements by complying with presumptive RACT requirements under 25 Pa. Code 129.97, with CTGs under 25 Pa. Code 129.96(a) and (b), NO_X averaging under 25 Pa. Code 129.98, or with a case-by-case limit in accordance with 25 Pa. Code 129.99. A technical and economic feasibility analysis is only required as part of the case-by-case limit development process required in section 129.99.

All of the sources at this facility are required to meet either a CTG under 25 Pa. Code 129.52d or presumptive requirements under 25 Pa. Code 129.97(c). Since all the sources at Mack Truck are meeting either presumptive or CTG requirements, a case-by-case analysis is not required.

The commenter's specific concern appears to arise from EPA's TSD where EPA, in discussing the regulatory status of the ''G'' Line (Source IDs 108 and 109) and the Final Spray Booth and Oven (Source IDs 114 and 116), identified that the typical technical and economic feasibility analysis was not conducted for these sources. However, EPA, in that document, also acknowledged that such an analysis was not required for these sources because they are now regulated under a CTG at section 129.52d. Nevertheless, since these sources were subject to previously SIP-approved RACT I requirements, PADEP had to ensure, pursuant to CAA section 110(l), that the new CTG requirements were at least as stringent as the prior RACT I requirements. Through an additional, source-specific analysis, PADEP determined that the newly established throughput limits for Source IDs 108 and 109, combined with compliance with the CTG's solvent content restrictions at 25 Pa. Code 129.52d, ensured that the RACT II limits were more stringent than the RACT I requirements. In order to ensure that stringency, PADEP added the newly established throughput limits to its RACT II requirements for these sources. For Source IDs 114 and 116, PADEP's 110(l) analysis led it to retain the existing RACT I requirements. Accordingly, PADEP was not performing a case-by-case determination for these sources under section 129.99, and a technical and economic feasibility analysis was not required. For these reasons, PADEP's SIP revision for the sources at Mack Truck meets RACT requirements and is approvable.

Comment 2: In the first part of the comment, the commenter states that the TSD for Tennessee Gas Pipeline Co., LLC, Marienville STA 307 is confusing and appears to be missing information for Source ID 135. More specifically, the commenter points to a listing of RACT requirements within that section that begins with Item #7 rather than Item #1. The second portion of the comment includes a claim that PADEP's conclusion was based only on a technical feasibility analysis and should have included an economic feasibility analysis as well. For these reasons, the

[4] The RACT II permits included in the docket for this rule are redacted versions of the facilities' federally enforceable permits. They reflect the specific RACT requirements being approved into the Pennsylvania SIP via this final action.

commenter asserts that EPA must either reject or repropose the SIP revision for Source 135.

Response 2: With respect to the first part of the comment, the commenter correctly identifies that the numbering of the list of RACT requirements for Source ID 135 (Engine A5C 3500 HP Pipeline Compressor Engine (Worthington ML–12)) contained in PADEP's Conclusions section of the TSD is misleading. There is an error in the numbering. It begins with Item #7 rather than Item #1. However, the information in the listing is accurate and complete. It summarizes all of the RACT requirements being imposed on Source ID 135. These RACT requirements are also included in PADEP's Technical Review Memo of RACT II Proposal and Plan Approval and the Redacted Plan Approval, which are both part of the docket for this rule.[5] The commenter also claims that this listing is confusing because it is set forth without explanation or description. However, the commenter is incorrect on this point. PADEP's Conclusions section of the TSD specifically begins: ''In accordance with 25 Pa. Code 129.99, PADEP has determined RACT for the following source as follows, based on the technical feasibility analysis performed:'' It then contains a narrative description of the RACT I and II requirements for Source 135 followed by the listing in question. While the misnumbering in the listing of RACT II requirements may have been somewhat confusing, EPA considers it an inadvertent error. As the information in the TSD and the docket was complete and accurate, EPA believes the information about PADEP's RACT II determination for Source ID 135 was available for review by the public and that there is no need to repropose the SIP revision for Tennessee Gas Pipeline Co., LLC, Marienville STA 307 (Marienville STA 307).

With respect to the second part of the comment, EPA continues to find that PADEP's CbC RACT determination for Source ID 135 is reasonable given the results of its feasibility analysis. Through the CbC analysis, PADEP identified two potential control technologies for use at this source. Selective catalytic reduction (SCR) was determined to be technically infeasible. However, the second technology, low emission combustion (LEC), was found to be technically feasible. The commenter is correct in identifying that PADEP did not conduct an economic feasibility analysis of this technology. Normally, an economic feasibility analysis would be required at this stage, but it was not required under the circumstances for this source. Because the company decided to install the LEC technology and PADEP imposed it as a RACT requirement, there was no need to conduct a separate analysis on economic feasibility. For these reasons, PADEP's SIP revision for Source 135 (at Marienville STA 307) meets RACT requirements and is approvable.

Comment 3: The commenter states that EPA should not approve any of these permits because commenter claims that the RACT CbC determinations are not achieving any real reductions from these sources. The commenter estimates that only two of the 14 sources in this rule required either emission reductions and/or the installation of new control technologies. The commenter requests that EPA take another look at the sources to determine whether existing controls could be tightened or new controls be installed.

Response 3: As described in the proposed rulemaking, Pennsylvania was required through implementation of the 1997 and 2008 8-hour ozone NAAQS to determine RACT II requirements for major NO_X and VOC emitting sources within the Commonwealth. PADEP had previously established CbC RACT requirements under the 1979 1-hour ozone NAAQS (RACT).[6] PADEP finalized its overall RACT II program, and it was conditionally approved by EPA.[7] As required by Pennsylvania's RACT II regulations, PADEP conducted, for sources seeking a CbC determination, an analysis examining what air pollution controls were available for those individual sources to determine the lowest emissions limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technologically and economic feasibility.[8]

As described in its technical review memoranda and related documents, which are part of the docket for this rule, PADEP evaluated the technical and/or economic feasibility of various control equipment for the individual sources at the facilities included in this rule and used these evaluations to determine the RACT II requirements. These determinations may or may not have resulted in additional emission reductions and/or installation of new control technologies depending on the outcome of the analyses, which were based on the specific nature of each individual source. For facilities subject to RACT I, PADEP also considered the prior RACT I requirements as appropriate to ensure that the RACT II requirements were as stringent as any previously established standards. In circumstances where the RACT I requirements were more stringent, they were retained and remain effective.

EPA recognizes that PADEP's CbC determinations at times resulted in only a continuation of RACT I requirements, but these determinations were made after a thorough review of the available control technology as demonstrated by the detailed record, which is part of the docket for this rule, submitted by PADEP to support its SIP revisions. The commenter's estimate of how often PADEP reduced an emission limit or required the installation of new technology is also misleading. Even when PADEP's CbC determination did not result in a more stringent emission limit or a new technology, PADEP sometimes imposed other measures that should lead to reduced emissions (*e.g.,* more specific operating requirements at the melt shops at IPSCO Koppel Tubular Corporation and the revised VOC control system for the spray booths at the York Group, Inc).[9] EPA continues to conclude that PADEP's CbC determinations reasonably evaluated the technical and economic feasibility of potential controls for the sources included in this rule as required by the RACT II requirements and are approvable.

IV. Final Action

EPA is approving case-by-case RACT determinations and/or alternative NO_X emissions limits for 14 sources in Pennsylvania, as required to meet obligations pursuant to the 1997 and 2008 8-hour ozone NAAQS, as revisions to the Pennsylvania SIP.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of source-specific RACT determinations and alternative NO_X emissions limits under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of VOC and NO_X in Pennsylvania. EPA has made, and will

[5] See Final CBC RACT Submittal Letter 1, which is part of the docket of this rule.

[6] 40 CFR 52.2020(d)(1).

[7] 84 FR 20274 (May 9, 2019).

[8] *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,'' and 44 FR 53762 (September 17, 1979).

[9] See Chapters 7 and 9 of EPA's Technical Support Document, dated June 2, 2021, which is part of the docket for this rule.

continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[10]

VI. Statutory and Executive Order Reviews

A. General Requirements

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. Accordingly, this action merely approves 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added 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. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Pennsylvania's NO_X and VOC RACT requirements for 14 facilities for the 1997 and 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 8, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

For the reasons set out in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by:

■ a. Revising the entries ''Consol Pennsylvania Coal Company—Bailey Prep Plant''; ''Latrobe Steel Company—Latrobe''; ''(Allegheny Ludlum Corporation) Jessop Steel Company—Washington Plant''; ''Koppel Steel Corporation—Koppel Plant''; ''Three Rivers Aluminum Company (TRACO)''; ''GenCorp (Plastic Films Division)—Jeannette Plant''; ''Koppel Steel Corporation—Ambridge Plant''; ''Allegheny Ludlum Steel Corporation''; ''Mack Trucks, Inc''; ''Tennessee Gas Pipeline Company—Howe Township''; ''York Group, Inc''; and ''Dart Container Corporation''.

■ b. Adding the following entries at the end of the table: ''CONSOL PA Coal CO LLC Bailey Prep Plt (formerly referenced as Consol Pennsylvania Coal Company—Bailey Prep Plant)''; ''Latrobe Specialty Metals—A Carpenter Co (formerly referenced as Latrobe Steel Company—Latrobe)''; ''Jessop Steel LLC—Washington Plant [formerly referenced as (Allegheny Ludlum Corporation) Jessop Steel Company—Washington Plant]''; ''IPSCO Koppel Tubulars LLC—Koppel Plt (formerly referenced as Koppel Steel Corporation—Koppel Plant)''; ''Kawneer Commercial Windows LLC—Cranberry Twp [formerly referenced as Three Rivers Aluminum Company (TRACO)]''; ''Omnova Solutions Inc—Jeannette Plant [formerly referenced as GenCorp (Plastic Films Division)—Jeannette Plant]''; ''IPSCO Koppel Tubulars LLC—Ambridge (formerly referenced as Koppel Steel Corporation—Ambridge Plant)''; ''ATI Flat Rolled Products Holdings LLC—Vandergrift (formerly

[10] 62 FR 27968 (May 22, 1997).

referenced as Allegheny Ludlum Steel Corporation)''; ''Mack Trucks, Inc.—Macungie (formerly referenced as Mack Trucks Inc.)''; ''Tennessee Gas Pipeline Co., LLC, Marienville STA 307 (formerly referenced as Tennessee Gas Pipeline Company—Howe Township)''; ''York Group Inc.—Black Bridge Rd''; ''Dart Container Corporation—Leola''; ''Dart Container Corporation—East Lampeter''; and ''MarkWest Liberty Bluestone Plant''.

The revisions and additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations [1]
*	*	*	*	*	*
Consol Pennsylvania Coal Company—Bailey Prep Plant.	OP–30–000–072	Greene	3/23/1999	08/6/01, 66 FR 40891.	See also 52.2064(h)(1).
*	*	*	*	*	*
Latrobe Steel Company—Latrobe.	OP–65–000–016	Westmoreland	12/22/1995	10/16/01, 66 FR 52517.	See also 52.2064(h)(2).
*	*	*	*	*	*
(Allegheny Ludlum Corporation) Jessop Steel Company—Washington Plant.	(OP)63–000–027	Washington	3/26/1999	10/16/01, 66 FR 52522.	See also 52.2064(h)(3).
Koppel Steel Corporation—Koppel Plant.	(OP)04–000–059	Beaver	3/23/2001	10/16/01, 66 FR 52522.	See also 52.2064(h)(4).
*	*	*	*	*	*
Three Rivers Aluminum Company (TRACO).	OP–10–267	Butler	3/1/2001	10/17/01, 66 FR 52695.	See also 52.2064(h)(5).
*	*	*	*	*	*
GenCorp (Plastic Films Division)—Jeannette Plant.	(OP)65–000–207	Westmoreland	1/4/1996	10/15/01, 66 FR 52322.	See also 52.2064(h)(6).
*	*	*	*	*	*
Koppel Steel Corporation—Ambridge Plant.	OP–04–000–227	Beaver	10/12/2000	10/15/01, 66 FR 52317.	See also 52.2064(h)(7).
*	*	*	*	*	*
Allegheny Ludlum Steel Corporation.	(OP–)65–000–137 ..	Westmoreland	5/17/1999	10/19/01, 66 FR 53090.	See also 52.2064(h)(8).
*	*	*	*	*	*
Mack Trucks, Inc	OP–39–0004	Northampton	5/31/1995	10/17/03, 68 FR 59741.	See also 52.2064(h)(9).
*	*	*	*	*	*
Tennessee Gas Pipeline Company—Howe Township.	OP–27–015	Forest	7/27/2000	3/30/05, 70 FR 16118.	See also 52.2064(h)(10).
*	*	*	*	*	*
York Group, Inc	OP–67–2014	York	7/3/1995	3/31/05, 70 FR 16416.	See also 52.2064(h)(11).
*	*	*	*	*	*
Dart Container Corporation	OP–36–2015	Lancaster	8/31/1995	6/8/07, 72 FR 31749	See also 52.2064(h)(12).
*	*	*	*	*	*
CONSOL PA Coal CO LLC Bailey Prep Plt (formerly referenced as Consol Pennsylvania Coal Company—Bailey Prep Plant).	30–00072L	Greene	3/12/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(1).
Latrobe Specialty Metals—A Carpenter Co (formerly referenced as Latrobe Steel Company—Latrobe).	65–00016	Westmoreland	02/26/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(2).
Jessop Steel LLC—Washington Plant [formerly referenced as (Allegheny Ludlum Corporation) Jessop Steel Company—Washington Plant].	63–00027	Westmoreland	03/11/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(3).

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations [1]
IPSCO Koppel Tubulars LLC—Koppel Plt (formerly referenced as Koppel Steel Corporation—Koppel Plant).	04–00059	Beaver	3/16/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(4).
Kawneer Commercial Windows LLC—Cranberry Twp [formerly referenced as Three Rivers Aluminum Company (TRACO)].	10–00267	Butler	3/04/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(5).
Omnova Solutions Inc—Jeannette Plant [formerly referenced as GenCorp (Plastic Films Division)—Jeannette Plant].	65–00207	Westmoreland	2/06/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(6).
IPSCO Koppel Tubulars LLC—Ambridge (formerly referenced as Koppel Steel Corporation—Ambridge Plant).	04–00227	Beaver	3/26/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(7).
ATI Flat Rolled Products Holdings LLC—Vandergrift (formerly referenced as Allegheny Ludlum Steel Corporation).	65–00137	Westmoreland	3/11/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(8).
Mack Trucks, Inc.—Macungie (formerly referenced as Mack Trucks Inc.).	39–00004	Lehigh	4/03/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(9).
Tennessee Gas Pipeline Co., LLC, Marienville STA 307 (formerly referenced as Tennessee Gas Pipeline Company—Howe Township).	27–015A	Forest	12/07/2018	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(10).
York Group Inc.—Black Bridge Rd.	67–05014C	York	3/04/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(11).
Dart Container Corporation—Leola.	36–05015	Lancaster	3/30/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(12).
Dart Container Corporation—East Lampeter.	36–05117	Lancaster	10/15/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(13).
MarkWest Liberty Bluestone Plant.	10–00368	Butler	2/20/2020	1/25/2022, [insert **Federal Register** citation].	52.2064(h)(14).

[1] The cross-references that are not § 52.2064 are to material that pre-date the notebook format. For more information, see § 52.2063.

* * * * *

■ 3. Amend § 52.2064 by adding paragraph (h) to read as follows:

§ 52.2064 EPA-approved Source-Specific Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X).

* * * * *

(h) Approval of source-specific RACT requirements for 1997 and 2008 8-hour ozone national ambient air quality standards for the facilities listed in this paragraph (h) are incorporated as specified. (Rulemaking Docket No. EPA–R03–OAR–2021–0217.)

(1) CONSOL PA Coal CO LLC Bailey Prep Plt—Incorporating by reference Permit No. PA–30–00072L, issued March 12, 2020, as redacted by Pennsylvania, which supersedes the prior RACT permit OP–30–000–072, issued March 23, 1999. See also § 52.2063(c)(149)(i)(B)(*8*) for prior RACT approval.

(2) Latrobe Specialty Metals—A Carpenter Co—Incorporating by reference Permit No. 65–00016, issued February 26, 2020, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. 65–000–016, issued December 22, 1995. See also § 52.2063(c)(158)(i)(B) for prior RACT approval.

(3) Jessop Steel LLC—Washington Plant—Incorporating by reference Permit 63–00027 issued on March 11, 2020, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. 63–00027, effective October 31, 2001, remain as RACT requirements except for conditions 5 and 6, which are being superseded. See also § 52.2063(c)(163)(i)(B)(*3*) for prior RACT approval.

(4) IPSCO Koppel Tubulars LLC—Koppel Plt—Incorporating by reference Permit No. 04–00059, issued March 16, 2020, as redacted by Pennsylvania, which supersedes the prior RACT permit no. 04–000–059, issued March 23, 2001. See also § 52.2063(c)(163)(i)(D) for prior RACT approval.

(5) Kawneer Commercial Windows LLC—Cranberry Twp—Incorporating by reference Permit #10–00267 issued on September 14, 2015, as amended on March 4, 2020. The RACT I requirements contained in TRACO Operating Permit No. 10–267, issued on March 1, 2001, remain in effect. See also § 52.2063(c)(170)(i)(B)(*7*) for prior RACT approval.

(6) Omnova Solutions Inc—Jeannette Plant—Incorporating by reference

Permit No. OP–65–000–207, issued February 6, 2020, as redacted by Pennsylvania. All permit requirements of the prior RACT Permit No. OP–65–000–207, effective January 4, 1996, remain as RACT requirements except for conditions 5, 6, 7 (mislabeled as condition 5) 8 (mislabeled as condition 6), and 9 (mislabeled as condition 7), which are being superseded. See also § 52.2063(c)(171)(i)(B) for prior RACT approval.

(7) IPSCO Koppel Tubulars LLC—Ambridge Incorporating by reference Permit No. 04–00227, issued March 26, 2020, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. PA 04–000–227 issued on October 12, 2000, remain as RACT requirements. See also § 52.2063(c)(180)(i)(B) for prior RACT approval.

(8) ATI Flat Rolled Products Holdings LLC—Vandergrift—Incorporating by reference Permit No. 65–00137, issued March 11, 2020, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. PA 65–000–137 issued on May 17, 1999, remain as RACT requirements. See also § 52.2063(c)(186)(i)(B)(*1*) for prior RACT approval.

(9) Mack Truck—Macungie Title V Operating permit no. 0039–00004, issued December 30, 2015, as amended April 3, 2020, which supersedes Operating Permit No. 39–0004, issued on May 31, 1995, except for Conditions (4), (7) (C)2 through 9, (7) (E)4 through 9, and (8)(a). See also § 52.2063(c)(207)(i)(B)(*1*) for prior RACT approval.

(10) Tennessee Gas Pipeline Co., LLC, Marienville STA 307—Incorporating by reference Permit No. 27–015A, issued December 7, 2018, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. PA 27–015 issued on July 27, 2000, are superseded by RACT II requirements except for Source ID 136. For Source ID 136, the presumptive RACT II limit is less stringent than the RACT I limit; therefore, the RACT I limit has been retained for Source ID 136. See also § 52.2020(d)(1) for prior RACT approval.

(11) York Group Inc.—Black Bridge Rd.—Incorporating by reference Permit No. 67–05014C, issued March 4, 2020, as redacted by Pennsylvania, which supersedes the prior RACT permit no. 67–2014, issued July 5, 1995, See also § 52.2020(d)(1) for prior RACT approval.

(12) Dart Container Corporation—Leola—Incorporating by reference Permit No. 36–05015, issued March 30, 2020,as redacted by Pennsylvania. Requirements of the prior RACT Permit No. OP–36–2015, effective August 31, 1995, remain as RACT requirements except for permit condition 7 for the flexographic presses, which are no longer in operation. See also § 52.2020(d)(1) for prior RACT approval.

(13) Dart Container Corporation—East Lampeter—Incorporating by reference Permit No. 36–05117, effective March 3, 2020, as redacted by Pennsylvania.

(14) MarkWest Liberty Bluestone–Incorporating by reference Permit No. 10–00368, issued February 20, 2020, as redacted by Pennsylvania.

[FR Doc. 2021–27232 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0677; FRL–9276–02–R4]

Air Plan Approval; South Carolina; Catawba Indian Nation Portion of the Charlotte-Gastonia-Rock Hill Area Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to a approve state implementation plan (SIP) revision submitted by the State of South Carolina, through the Department of Health and Environmental Control (DHEC), via a letter dated July 7, 2020. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Catawba Indian Nation portion (hereinafter referred to as the Catawba Area) of the Charlotte-Gastonia-Rock Hill NC-SC 1997 8-hour ozone maintenance area (hereinafter referred to as the Charlotte NC-SC 1997 8-hour NAAQS Area). The Charlotte NC-SC 1997 8-hour NAAQS Area is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union, and a portion of Iredell County (*i.e.,* Davidson and Coddle Creek Townships) in North Carolina and a portion of York County, South Carolina, which includes the Catawba Area. EPA is finalizing approval of the Catawba Area LMP because it provides for the maintenance of the 1997 8-hour ozone NAAQS within the Catawba Area through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Catawba Area federally enforceable as part of the South Carolina SIP.

DATES: This rule is effective February 24, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0677. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* 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. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9029. Ms. Spann can also be reached via electronic mail at *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Clean Air Act (CAA or Act), EPA is approving the Catawba Area LMP for the 1997 8-hour ozone NAAQS, adopted by DHEC on July 7, 2020, and submitted by DHEC as a revision to the South Carolina SIP under a letter dated July 7, 2020.[1] In 2004, the Charlotte NC-SC 1997 8-hour NAAQS Area, which includes the Catawba Area, was designated as nonattainment for the 1997 8-hour ozone NAAQS. Subsequently, in 2012, after a clean data determination [2] and EPA's approval of a maintenance plan, the South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS

[1] EPA received the SIP submission on July 10, 2020.

[2] *See* 77 FR 13493 (March 7, 2012).

Area, which includes the Catawba Area, was redesignated to attainment for the 1997 8-hour ozone NAAQS.

The Catawba Area LMP is designed to maintain the 1997 8-hour ozone NAAQS within the Catawba Area through the end of the second 10-year portion of the maintenance period beyond redesignation. As a general matter, the Catawba Area LMP relies on the same control measures and relevant contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by DHEC for the first 10-year period.

In a notice of proposed rulemaking (NPRM), published on November 26, 2021 (86 FR 67402), EPA proposed to approve the Catawba Area LMP because the State made a showing, consistent with EPA's prior LMP guidance, that the Charlotte NC-SC 1997 8-hour NAAQS Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that it met the other maintenance plan requirements. The details of South Carolina's submission and the rationale for EPA's action are explained in the November 26, 2021, NPRM. Comments on the November 26, 2021, NPRM were due on or before December 27, 2021. EPA did not receive any comments on the November 26, 2021, NPRM.

II. Final Action

EPA is taking final action to approve the Catawba Area LMP for the 1997 8-hour ozone NAAQS, submitted by DHEC on July 7, 2020, as a revision to the South Carolina SIP.

EPA is approving the Catawba Area LMP because it includes an acceptable update of various elements of the 1997 8-hour ozone NAAQS Maintenance Plan approved by EPA for the first 10-year period and retains the relevant provisions of the SIP. EPA also finds that the Catawba Area qualifies for the LMP option and that therefore the Catawba Area LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes the Catawba Area's 1997 8-Hour Ozone LMP to be sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Catawba Area over the second 10-year maintenance period, through 2032, and thereby satisfy the requirements for such a plan under CAA section 175A(b).

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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 merely approves 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).

Because this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added 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. EPA will submit a report containing this action 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 publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart PP—South Carolina

■ 2. In § 52.2120, amend the table in paragraph (e) by adding the entry ''1997 8-hour ozone Maintenance Plan for the Catawba Indian Nation portion of the bi-state Charlotte Area'' at the end of the table to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) * * *

Provision	State effective date	EPA approval date	Explanation
*	*	*	*
1997 8-hour ozone Maintenance Plan for the Catawba Indian Nation portion of the bi-state Charlotte Area.	7/7/2020	1/25/2022, [Insert citation of publication].	Applicable only to the Catawba Indian Nation Reservation portion within the 1997 8-hour ozone boundary in York County, South Carolina (within the Rock Hill-Fort Mill Area Transportation Study Metropolitan Planning Organization Area).

[FR Doc. 2022–01300 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0473; FRL–8981–02–R4]

Air Plan Approval; North Carolina; Mecklenburg Monitoring, Recordkeeping, and Reporting Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg Local Implementation Plan (LIP). The revision was submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality (MCAQ) via a letter dated April 24, 2020, and was received by EPA on June 19, 2020. The revision updates several Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules and adds three new rules for incorporation into the LIP. These rules cover general recordkeeping, monitoring, and reporting requirements. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective February 24, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2021–0473. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* 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. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Mecklenburg County LIP was originally submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County prepared three submittals in order to modify the LIP for, among other things, general consistency with the North Carolina SIP.[1] The three submittals were submitted to EPA as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October25, 2017, update to EPA and also submitted the January 21, 2016, and January 14, 2019, updates. Due to an inconsistency with public notice at the local level, these submittals were withdrawn from EPA through a letter dated February 15, 2019. Mecklenburg County corrected this error, and NCDAQ submitted the updates in a revision dated April 24, 2020.[2]

On December 6, 2021, EPA published a notice of proposed rulemaking (NPRM) proposing to approve the April 24, 2020, SIP revision regarding updates to several of Mecklenburg's monitoring, recordkeeping and reporting rules. *See* 86 FR 68957. The December 6, 2021, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the December 6, 2021, NPRM were due on or before January 5, 2022. EPA received no comments on the December 6, 2021, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes

incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of MCAPCO Rules 2.0601, *Purpose and Scope;* 2.0602, *Definitions;* 2.0604, *Exceptions to Monitoring and Reporting Requirements;* 2.0605, *General Recordkeeping and Reporting Requirements;* 2.0607, *Large Wood and Wood-Fossil Fuel Combination Units;* 2.0610, *Delegation Federal Monitoring Requirements;* 2.0611, *Monitoring Emissions from Other Sources;* and 2.0613, *Quality Assurance Program,* all of which have an effective date of December 15, 2015, into the Mecklenburg County portion of the North Carolina SIP. EPA has made and will continue to make these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

III. Final Action

EPA is finalizing the aforementioned changes and additions to the Mecklenburg LIP. Specifically, EPA is approving changes to MCAPCO Rules 2.0601, *Purpose and Scope;* 2.0602, *Definitions;* 2.0604, *Exceptions to Monitoring and Reporting Requirements;* 2.0607, *Large Wood and Wood-Fossil Fuel Combination Units;* and 2.0610, *Delegation Federal Monitoring Requirements.* EPA is also approving the addition of Rules 2.0605, *General Recordkeeping and Reporting Requirements;* 2.0611, *Monitoring Emissions from Other Sources;* and 2.0613, *Quality Assurance Program* into the Mecklenburg LIP. EPA is approving these changes because they are consistent with the CAA.

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 Act and applicable Federal regulations. *See* 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 merely approves 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added 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. EPA will submit a report containing this action 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 publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

■ 2. In § 52.1770(c)(3), the table is amended by removing the entries for ''Section 2.0601,'' ''Section 2.0602,'' ''Section 2.0604,'' ''Section 2.0605,'' ''Section 2.0607,'' ''Section 2.0610,'' ''Section 2.0611,'' and ''Section 2.0613'' and adding in their places entries for ''Rule 2.0601,'' ''Rule 2.0602,'' ''Rule 2.0604,'' ''Rule 2.0605,'' ''Rule 2.0607,'' ''Rule 2.0610,'' ''Rule 2.0611,'' and ''Rule 2.0613,'' respectively, to read as follows:

[1] *See* 62 FR 27968 (May 22, 1997).

§ 52.1770 Identification of plan.

(c) * * *

* * * * *

(3) EPA APPROVED MECKLENBURG COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Article 2.0000 Air Pollution Control Regulations and Procedures				
*	*	*	*	*
Section 2.0600 Monitoring: Recordkeeping: Reporting				
Rule 2.0601	Purpose and Scope	12/15/2015	1/25/2022, [Insert citation of publication].	
Rule 2.0602	Definitions	12/15/2015	1/25/2022, [Insert citation of publication].	
Rule 2.0604	Exceptions to Monitoring and Reporting Requirements.	12/15/2015	1/25/2022, [Insert citation of publication].	
Rule 2.0605	General Recordkeeping and Reporting Requirements.	12/15/2015	1/25/2022, [Insert citation of publication].	
*	*	*	*	*
Rule 2.0607	Large Wood and Wood-Fossil Fuel Combination Units.	12/15/2015	1/25/2022, [Insert citation of publication].	
*	*	*	*	*
Rule 2.0610	Delegation Federal Monitoring Requirements	12/15/2015	1/25/2022, [Insert citation of publication].	
Rule 2.0611	Monitoring Emissions from Other Sources	12/15/2015	1/25/2022, [Insert citation of publication].	
*	*	*	*	*
Rule 2.0613	Quality Assurance Program	12/15/2015	1/25/2022, [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2022–01301 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0406; FRL–9319–02–R4]

Air Plan Approval; Georgia; 2015 8-Hour Ozone Nonattainment New Source Review Permit Program Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia through the Georgia Environmental Protection Division (GA EPD) on July 2, 2020. EPA is approving Georgia's certification that its existing Nonattainment New Source Review (NNSR) permitting regulations meet the nonattainment planning requirements for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the Atlanta Area, comprised of the counties of Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry. This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: This rule is effective February 24, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0406. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* 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. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9144. Ms. Williams can also be reached via electronic mail at *williams.pearlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 6, 2018, EPA issued a final rule entitled ''Implementation of the 2015 National Ambient Air Quality Standards for ozone: State Implementation Plan Requirements'' (SIP Requirements Rule), which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS. *See* 83 FR 62998; 40 CFR part 51, subpart CC.

Based on the nonattainment designation for the 2015 8-hour ozone standard, Georgia was required to develop a SIP revision addressing the requirements of CAA sections 172(c)(5) and 173 for the Atlanta Area. *See* 42 U.S.C. 7502(c). Section 172(c)(5) of the CAA requires each state with a nonattainment area to submit a SIP revision requiring NNSR permits in the nonattainment area in accordance with the permitting requirements of CAA section 173. The minimum SIP requirements for NNSR permitting for the 2015 8-hour ozone NAAQS are located in 40 CFR 51.165. *See* 40 CFR 51.1314. On July 2, 2020, Georgia submitted a SIP revision addressing, among other things,[1] permit program requirements (*i.e.,* NNSR) for the 2015 8-hour ozone NAAQS for the Atlanta Area.

On December 2, 2021, EPA published a notice of proposed rulemaking (NPRM) proposing to approve the July 2, 2020, SIP revision regarding 2015 8-hour Ozone Nonattainment New Source Review Permit Program Requirements for the Atlanta Area. *See* 86 FR 68447. The December 2, 2021, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the December 2, 2021, NPRM were due on or before January 3, 2022. EPA received no comments on the December 2, 2021, NPRM.

II. Final Action

EPA is approving Georgia's SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the Atlanta Area, submitted on July 2, 2020. EPA has concluded that Georgia's submission fulfills the 40 CFR 51.1314 requirement and meets the requirements of CAA sections 172(c)(5) and 173 and the minimum SIP requirements of 40 CFR 51.165.

[1] The other elements of this submittal are being addressed in separate rulemakings.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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 merely approves 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added 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. EPA will submit a report containing this action 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 publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

■ 2. In § 52.570, amend the table in paragraph (e) by adding an entry for ''2015 8-hour Ozone NAAQS Nonattainment New Source Review

Requirements for the Atlanta Area'' after the entry for ''2008 8-hour ozone Maintenance Plan for the Atlanta Area,

Revision for the Removal of Transportation Control Measures'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	* *	*	* *	*
2015 8-hour Ozone NAAQS Nonattainment New Source Review Requirements for the Atlanta Area.	Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry Counties.	7/2/2020	1/25/2022, [Insert citation of publication].	
* *	* *	*	* *	*

[FR Doc. 2022–01299 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2020–0530; FRL–6791–05–OW]

RIN 2040–AF89

Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems and Announcement of Public Meetings; Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and notice of public meetings; correction.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is making minor, non-substantive changes to a final rule, ''Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems and Announcement of Public Meetings,'' that appeared in the **Federal Register** on December 27, 2021. These corrections do not change any final action taken by EPA on December 27, 2021; rather, they simply clarify the amendatory instructions.

DATES: Effective January 26, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda D. Bowden, Standards and Risk Management Division (SRMD), Office of Ground Water and Drinking Water (OGWDW) (MS 140), Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268; telephone number: (513) 569–7961; email address: *bowden.brenda@epa.gov;* or Melissa Simic, SRMD, OGWDW (MS 140), Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268; telephone number: (513) 569–7864; email address: *simic.melissa@epa.gov.* For general information, visit the Ground Water and Drinking Water web page at: *https://www.epa.gov/ground-water-and-drinking-water.*

SUPPLEMENTARY INFORMATION: Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without proposal and opportunity for comment because such notice and opportunity for comment is unnecessary for the following reasons: EPA is making minor, non-substantive changes to a final rule, ''Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems,'' that appeared in the **Federal Register** on December 27, 2021. These corrections do not change any final action taken by EPA on December 27, 2021; rather, they simply clarify the logistical instructions to the Office of the Federal Register to amend 40 CFR part 141. Thus, notice and comment is unnecessary because the public has previously had the opportunity to comment on the proposed action finalized on December 27, 2021.

Corrections

In FR Doc. 2021–27858 appearing on page 73131 in the **Federal Register** of Monday, December 27, 2021, the following corrections are made:

§ 141.35 [Corrected]

■ 1. On page 73151, in the second column, in part 141, instruction 2.a, ''In paragraph (a), revise the fourth sentence;'' is corrected to read ''In paragraph (a), revise the third sentence;''.

■ 2. On page 73151, in the third column, in part 141, instruction 2.d, ''In paragraph (d)(2), revise the first, second, and third sentences; and'' is corrected to read ''In paragraph (d)(2), revise the heading and the first and second sentences; and''.

§ 141.40 [Corrected]

■ 3. On page 73155, in the first column, in part 141, instructiont 3.d, ''Revise paragraphs (a)(4)(i)(A) through (C), (a)(4)(ii) introductory text, and the first sentence in paragraph (a)(4)(ii)(A);'' is corrected to read ''Revise paragraphs (a)(4)(i)(A) through (C), (a)(4)(ii) introductory text, and paragraph (a)(4)(ii)(A);''.

■ 4. On page 73155, in the second column, in part 141, instruction 3.f, ''In paragraph (a)(5)(ii), revise the fifth and sixth sentences;'' is corrected to read ''In paragraph (a)(5)(ii), revise the fourth and fifth sentences;''.

Radhika Fox,

Assistant Administrator.

[FR Doc. 2022–01383 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R04–UST–2020–0696; FRL–9057–02–R4]

Commonwealth of Kentucky: Codification and Incorporation by Reference of Approved State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976 (RCRA), as amended, authorizes the Environmental Protection Agency (EPA) to grant approval to States to operate their underground storage tank (UST) programs in lieu of the Federal program. The Commonwealth of Kentucky (Commonwealth or State) applied to the EPA for final approval of its UST Program on October 7, 2019, and on September 16, 2020, the EPA published a final determination and approval of the Commonwealth's UST Program. This action codifies the EPA's prior approval of the Commonwealth's UST Program, and incorporates by reference approved provisions of the State's statutes and regulations.

DATES: This rule is effective March 28, 2022, unless the EPA receives adverse comment by February 24, 2022. If the EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 28, 2022.

ADDRESSES: Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: singh.ben@epa.gov.* Include the Docket ID No. EPA–R04–UST–2020–0696 in the subject line of the message.

Instructions: Submit your comments, identified by Docket ID No. EPA–R04–UST–2020–0696, via the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit: *https://www.epa.gov/dockets/commenting-epa-dockets.*

Out of an abundance of caution for members of the public and our staff, the public's access to the EPA Region 4 Offices is by appointment only to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov* or via email. The EPA encourages electronic comment submittals, but if you are unable to submit electronically or need other assistance, please contact Ben Singh, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. The index to the docket for this action is available electronically at *https://www.regulations.gov.* The documents that form the basis of this codification and associated publicly available docket materials are available for review on the *https://www.regulations.gov* website. The EPA encourages electronic reviewing of these documents, but if you are unable to review these documents electronically, please contact Ben Singh to schedule an appointment to view the documents at the Region 4 Offices. Interested persons wanting to examine these documents should make an appointment at least two weeks in advance. The EPA Region 4 requires all visitors to adhere to the COVID–19 protocol. Please contact Ben Singh for the COVID–19 protocol requirements prior to your appointment.

Please also contact Ben Singh if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you. For further information on the EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Ben Singh, RCRA Programs and Cleanup Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; Phone number: (404) 562–8922; email address: *singh.ben@epa.gov.* Please contact Ben Singh by phone or email for further information.

SUPPLEMENTARY INFORMATION:

I. Codification

Codification is the process of placing citations and references to a State's statutes and regulations that comprise a State's approved UST program into the Code of Federal Regulations (CFR). The EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference State statutes and regulations that the EPA can enforce, after the approval is final, under sections 9005 and 9006 of RCRA, and any other applicable statutory provisions. The incorporation by reference of the EPA-approved State programs in the CFR should substantially enhance the public's ability to discern the status of the approved State UST programs and State requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each State.

A. For what has the Commonwealth previously been approved?

On September 16, 2020, the EPA published a notice in the **Federal Register** announcing its decision to grant final approval to the Commonwealth to operate its UST Program as described in an October 7, 2019 State Application (85 FR 57754). The State UST Program regulations were amended effective April 5, 2019, and included revisions which correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 State program approval (SPA) regulations (2015 Federal Revisions). As a result of the EPA's approval, these provisions became subject to the EPA's corrective action, inspection, and enforcement authorities under RCRA sections 9003(h), 9005, and 9006, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions.

B. What codification decision has the EPA made in this rule?

In this rule, the EPA is finalizing regulatory text that incorporates by reference the federally approved Kentucky UST Program. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference the Commonwealth's statutes and regulations as described in the amendments to 40 CFR part 282 set forth below. These documents are available through *https://www.regulations.gov.* This codification reflects the State UST Program in effect at the time the EPA granted its approval of the Kentucky UST Program, and only the EPA-approved provisions of the

Kentucky UST Program will be incorporated by reference.

To codify the EPA's approval of Kentucky's UST Program, the EPA has added section 282.67 to Title 40 of the CFR. More specifically, in 40 CFR 282.67(d)(1)(i), the EPA is incorporating by reference the EPA-approved Kentucky UST Program. Section 282.67(d)(1)(ii) identifies the State's statutes and regulations that are part of the approved State UST Program, although not incorporated by reference for enforcement purposes, unless they impose obligations on regulated entities. Section 282.67(d)(1)(iii) identifies the State's statutory and regulatory provisions that are broader in scope or external to the State's approved UST Program and therefore not incorporated by reference. Section 282.67(d)(2) through (d)(5) reference the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, Program Description, and Memorandum of Agreement, which are part of the State Application and part of the UST Program under subtitle I of RCRA.

C. What is the effect of the EPA's codification of the federally approved Kentucky UST Program on enforcement?

The EPA retains the authority under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions, to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved States. If the EPA determines it will take such actions in Kentucky, the EPA will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures rather than the State analogs. Therefore, the EPA is not incorporating by reference the Commonwealth's procedural and enforcement authorities, although they are listed in 40 CFR 282.67(d)(1)(ii) and were previously considered by the EPA in determining the adequacy of Kentucky's enforcement authority. The Commonwealth's authority to inspect and enforce the State's UST Program continues to operate independently under State law.

D. What State provisions are not part of the codification?

Some provisions of the State's UST Program are not part of the federally approved State UST Program. Where an approved State program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of enforcement in part 282. *See* 40 CFR 281.12(a)(3)(ii). In addition, provisions that are external to the State UST Program approval requirements, but included in the State Application, are also being excluded from incorporation by reference in part 282. For reference and clarity, 40 CFR 282.67(d)(1)(iii) lists the Kentucky statutory and regulatory provisions which are broader in scope than the Federal program or external to State UST program approval requirements. These provisions are, therefore, not part of the approved UST Program that the EPA is codifying. Although these provisions cannot be enforced by the EPA, the State will continue to implement and enforce such provisions under State law.

E. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this action as noncontroversial and anticipate no adverse comment. Notice and opportunity for comment were provided earlier on the EPA's decision to approve the Kentucky program, and the EPA is not now reopening that decision nor requesting comment on it.

F. What happens if the EPA receives comments that oppose this codification?

Along with this direct final rule, the EPA is simultaneously publishing a separate document in the ''Proposed Rules'' section of this **Federal Register** that serves as the proposal to codify the State's UST Program, and provides an opportunity for public comment. If the EPA receives comments that oppose this codification, the EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before it becomes effective. The EPA will make any further decision on codification of the State UST Program after considering all comments received during the comment period. The EPA will then address all public comments in a later final rule.

II. Statutory and Executive Order Review

This action merely codifies Kentucky's UST Program that the EPA has previously approved pursuant to RCRA Section 9004 and does not impose additional requirements other than those imposed by State law. For these reasons, this action:

- Is not a significant regulatory action and has been exempted from 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 subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to the 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 RCRA;
- Does not provide the 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); and
- Does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added 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. The EPA will submit a report containing this document 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 publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final action will be effective March 28, 2022.

List of Subjects in 40 CFR Part 282

Administrative practice and procedure, Environmental protection, Hazardous substances, Incorporation by reference, Petroleum, Reporting and recordkeeping requirements, State program approval, and Underground storage tanks.

Authority: This action is issued under the authority of sections 2002(a), 7004(b), 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), 6991c, 6991d, and 6991e.

Dated: January 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons set forth in the preamble, the EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

■ 2. Add § 282.67 to read as follows:

§ 282.67 Kentucky State-Administered Program.

(a) *History of the approval of Kentucky's UST Program.* The Commonwealth of Kentucky (Commonwealth or Kentucky) is approved to administer and enforce an underground storage tank (UST) program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's UST Program, as administered by the Kentucky Department for Environmental Protection (KDEP), was approved by the EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. The EPA published the notice of final determination approving the Kentucky UST Program on September 16, 2020, and that approval became effective immediately.

(b) *Enforcement authority.* Kentucky has primary responsibility for enforcing its UST Program. However, the EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, as well as under other statutory and regulatory provisions.

(c) *Retention of program approval.* To retain program approval, Kentucky must revise its approved UST Program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Kentucky obtains approval for revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) *Final approval.* Kentucky has final approval for the following elements submitted to the EPA and approved effective September 16, 2020.

(1) *State statutes and regulations*—(i) *Incorporation by reference.* The Kentucky materials cited in this paragraph and listed in appendix A to this part, are incorporated by reference as part of the UST Program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may access copies of the Kentucky statutes and regulations that are incorporated by reference from the Kentucky Department for Environmental Protection, Underground Storage Tank Branch, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601. You may also access copies of the statues and regulations that are incorporated by reference from the Kentucky Legislative Research Commission at the following website: *https://legislature.ky.gov/Pages/index.aspx.* You may inspect all approved material at the EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303; Phone number: (404) 562–9900; or the National Archives and Records Administration (NARA), email: *fr.inspection@nara.gov;* website: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(A) Kentucky Statutory Requirements Applicable to the Underground Storage Tank Program, dated September 10, 2021.

(B) Kentucky Regulatory Requirements Applicable to the Underground Storage Tank Program, dated September 10, 2021.

(ii) *Legal basis.* The EPA considered the following statutes and regulations which provide the legal basis for the State's implementation of the UST Program, but these provisions do not replace Federal authorities. Further, these provisions are not incorporated by reference, unless the provisions place requirements on regulated entities.

(A) *Kentucky Revised Statutes (KRS), Chapter 61, subchapters 870 to 884* (2018)—insofar as these provisions relate to authorities enabling public participation and the sharing of information.

(B) *Kentucky Revised Statutes (KRS), Chapter 224* (2017):

(*1*) KRS 224.1–400(9) and (11), insofar as these provisions provide authority for release reporting and notification to KDEP.

(*2*) KRS 224.10–100(5), (10), and (28), insofar as these provisions relate to the general powers and duties of KDEP to prevent pollution, conduct inspections and compliance monitoring, and promulgate UST regulations.

(*3*) KRS 224.10–410, insofar as it relates to the authority of KDEP to issue an order for corrective measures without a hearing.

(*4*) KRS 224.10–420(2), insofar as it relates to the administrative processes governing enforcement proceedings and public participation in the enforcement process.

(*5*) KRS 224.10–440, insofar as it relates to regulations governing the procedural requirements for administrative hearings.

(*6*) KRS 224.60–105(2)–(4), insofar as these provisions relate to the general authority of KDEP to regulate USTs and the preemption of local laws, ordinances, and regulations.

(*7*) KRS 224.60–120(6), insofar as it relates to the authority of KDEP to promulgate administrative regulations for implementing financial responsibility requirements.

(*8*) KRS 224.60–135(1), (2), and (4), insofar as these provisions relate to the authority of KDEP to require or initiate corrective action for releases into the environment.

(*9*) KRS 224.60–137(3), insofar as it relates to the duty of KDEP to develop standards for corrective action.

(*10*) KRS 224.60–138, insofar as it relates to the duties of KDEP to determine whether corrective action for a release from or closure of a petroleum UST has been completed.

(*11*) KRS 224.60–155, insofar as it relates to the authority of KDEP to assess a civil penalty for failure to

comply with the administrative regulations.

(*12*) KRS 224.99–010(9), insofar as it applies to KRS 224.1–400, and relates to the authority to assess a civil penalty and the concurrent jurisdiction and venue of the Franklin Circuit Court.

(*13*) KRS 224.99–020, insofar as it relates to the authority to commence an enforcement action to require compliance, or recovery of penalties or costs.

(C) *Kentucky Rules of Civil Procedure, Rule 24,* insofar as it provides for public participation in the State enforcement process, including intervention.

(D) *401 Kentucky Administrative Regulations (KAR) 42:020* (2019)— Section 18, insofar as it relates to the authority of KDEP to implement delivery prohibition.

(E) *400 Kentucky Administrative Regulations (KAR) Chapter 1* (2018):

(*1*) 400 KAR 1:090, insofar as it establishes procedures for administrative hearings to enforce compliance, and provides for public participation.

(*2*) 400 KAR 1:100, insofar as it contains the general administrative hearing practice provisions governing matters brought to enforce compliance with the UST Program.

(iii) *Other provisions not incorporated by reference.* The following statutory and regulatory provisions are broader in scope than the federal program or external to the State UST program approval requirements. Therefore, these provisions are not part of the approved program, and are not incorporated by reference herein:

(A) *Kentucky Revised Statutes (KRS) Chapter 224:*

(*1*) KRS 224.60–110 is external insofar as it contains the Kentucky General Assembly's legislative intent with respect to the regulation of petroleum underground storage tanks.

(*2*) KRS 224.60–130 is broader in scope insofar as it relates to the administration of the petroleum storage tank environmental assurance fund.

(*3*) KRS 224.60–135(3) is external insofar as it relates to the obligation of KDEP to notify the UST owner or operator prior to initiating or contracting for corrective action.

(*4*) KRS 224.60–135(5) is broader in scope insofar as it relates to the authority of the State Fire Marshal to promulgate regulations requiring persons who install, repair, close or remove USTs to demonstrate financial assurance.

(*5*) KRS 224.60–137(1), (2), and (4) are external insofar as they relate to contracting with the University of Kentucky for the purpose of updating standards for corrective action and for the Cabinet to develop an inventory of facilities eligible for reimbursement.

(*6*) KRS 224.60–140 is broader in scope insofar as it relates to the creation and administration of a petroleum storage tank environmental assurance fund.

(*7*) KRS 224.60–142 is broader in scope insofar as it relates to UST registration requirements applicable to participation in the petroleum storage tank environmental assurance fund.

(*8*) KRS 224.60–145 is broader in scope insofar as it relates to the establishment of an environmental assurance fee and deposit fee, and insofar as it relates to administration of accounts in the petroleum storage tank environmental assurance fund.

(*9*) KRS 224.60–150 is broader in scope insofar as it relates to the authority to levy and collect a fee from owners or operators of USTs for the purpose of funding the administration of the UST Program.

(*10*) KRS 224.60–160 is external insofar as it relates to the severability of any provision of the statute.

(B) *401 Kentucky Administrative Regulations (KAR) Chapter 42:*

(*1*) 401 KAR 42:020

(*i*) Section 2(1)(b) is external insofar as it relates to the attendance of a KDEP representative during installation.

(*ii*) Sections 2(2)–(6) are broader in scope insofar as they relate to UST registration requirements.

(*iii*) Section 2(7)(c) is broader in scope insofar as it relates to the submittal of an amended UST Registration Form for UST sale.

(*iv*) Sections 2(8)–(9) are broader in scope insofar as they relate to registration requirements and the collection of annual fees.

(*v*) Section 3(1) is broader in scope insofar as it relates to the submittal of an amended UST Registration Form for temporary closure.

(*vi*) Section 7 is broader in scope insofar as it places requirements on shear valves, components that are not UST system components.

(*vii*) Sections 11(4) and (9) are broader in scope insofar as they place certification and qualification requirements directly on corrosion prevention, protection, and repair contractors.

(*viii*) Section 13(2) is broader in scope insofar as it requires repair contractors to be certified by the State Fire Marshal.

(*ix*) Sections 15(6) and (7) are broader in scope insofar as they place qualification requirements directly on system equipment testers to validate equipment test results.

(*x*) Section 22 is external insofar as it relates to the authority of KDEP to extend compliance deadlines.

(*2*) 401 KAR 42:060

(*i*) Section 2 is external insofar as it relates to the authority of the Environmental Response Team during environmental emergencies.

(*ii*) Section 7 is external insofar as it relates to classification of UST facilities following closure or a release.

(*iii*) Section 8 is external insofar as it relates to the authority of KDEP to issue a no further action letter.

(*iv*) Section 9 is external insofar as it relates to the authority of KDEP to extend compliance deadlines.

(*3*) 401 KAR 42:250 is broader in scope insofar as it establishes eligibility requirements and procedures for the petroleum storage tank environmental assurance fund.

(*4*) 401 KAR 42:330 is broader in scope insofar as it establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account.

(2) *Statement of legal authority.* The Attorney General's statement, signed by the General Counsel for the Kentucky Energy and Environment Cabinet on September 23, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Adequate Enforcement Procedures'' submitted as part of the original application on October 7, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on October 7, 2019, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 4 and the Energy and Environment Cabinet, Kentucky Department for Environmental Protection, signed by the EPA Regional Administrator on August 18, 2020, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Amend appendix A to part 282 by adding an entry for ''Kentucky'' to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Kentucky

(a) The statutory provisions include:

(1) *Kentucky Revised Statutes (KRS) Chapter 224.*

224.60–100 Underground storage tanks and regulated substances defined.

224.60–105(1) Registration of underground storage tanks—Programs to regulate tanks.

224.60–115 Definitions for KRS 224.60–120 to 224.60–150.

224.60–120 Financial responsibility of petroleum storage tank owner or operator—Administrative regulations, except (6).

224.60–135(1) Corrective action for a release into the environment from a petroleum storage tank, except the second sentence in (1).

(2) [Reserved]

(b) The regulatory provisions include:

(1) 401 Kentucky Administrative Regulations (KAR) Chapter 42.

401 KAR 42:005. Definitions for 401 KAR Chapter 42.

401 KAR 42:020. UST system requirements, notification, registration, and annual fees.

Section 1. Applicability and Exclusions.

Section 2. Notification, Registration, and Annual Fees, except (1)(b), (2)–(6), and certain provisions in (7)(c), (8) and (9).

Section 3. Temporary Closure, except (1).

Section 4. Performance Standards for New UST Systems.

Section 5. Upgrading of Existing UST Systems.

Section 6. Double Walled Tanks and Piping Requirements.

Section 8. Spill Containment Devices (Spill Buckets and Catch Basins).

Section 9. Overfill Prevention Requirements.

Section 10. Under-dispenser Containment (UDC) and Sump Requirements.

Section 11. Corrosion Protection Operation and Maintenance, except certain language in (4) and (9).

Section 12. Compatibility.

Section 13. Repairs, except (2).

Section 14. Noncorrodible Piping.

Section 15. Release Detection, except (6) and (7).

Section 16. Operator Training Requirements.

Section 17. Walkthrough Inspections.

Section 19. Recordkeeping.

Section 20. Financial Responsibility.

Section 21. Lender Liability.

Section 23. Incorporation by Reference.

401 KAR 42:060. UST system release and corrective action requirements.

Section 1. Reporting for Releases, Spills, and Overfills.

Section 3. Off-Site Impacts.

Section 4. Release Investigation and Confirmation.

Section 5. Release Response and Corrective Action.

Section 6. Permanent Closure or Change in Service.

Section 10. Incorporation by Reference.

(2) [Reserved]

* * * * *

[FR Doc. 2022–01296 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 17–97; FCC 21–122, FR ID 63445]

Call Authentication Trust Anchor

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission takes action to further combat illegally spoofed robocalls by accelerating the date by which small voice service providers that are most likely to be the source of illegal robocalls must implement the STIR/SHAKEN caller ID authentication framework.

DATES: This rule is effective February 24, 2022.

FOR FURTHER INFORMATION CONTACT: Jonathan Lechter, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0984, *jonathan.lechter@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report and Order* in WC Docket No. 17–97, adopted on December 9, 2021, and released on December 10, 2021. The document is available for download at *https://docs.fcc.gov/public/attachments/FCC-21-122A1.pdf.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

I. Fourth Report and Order

1. In light of the overwhelming record support and available evidence showing that non-facilities-based small voice service providers are originating a large and disproportionate amount of robocalls, we require this subset of providers to implement STIR/SHAKEN a year sooner than previously required, while maintaining the full extension for those small voice service providers that are facilities-based. We further require any small voice service providers that the Enforcement Bureau suspects of originating illegal robocalls and that fails to mitigate such traffic upon Bureau notice or otherwise fails to meet its burden under § 64.1200(n)(2) of our rules, to implement STIR/SHAKEN within 90 days of that determination unless sooner implementation is otherwise required. Through this action, we close a gap in our current STIR/SHAKEN regime and, by targeting those providers most likely to be involved in illegal robocalling, we reap a substantial portion of the benefits offered by STIR/SHAKEN to Americans.

A. Basis for Shortening Extension for a Subset of Small Voice Service Providers

2. We find that a subset of small voice service providers constitute a large and increasing source of illegal robocalls and should therefore be subject to a shortened extension. In the *Caller ID Authentication Third Further Notice of Proposed Rulemaking* (*Small Provider FNPRM*) (86 FR 30571 (June 9, 2021)), we proposed supporting this conclusion on the basis of evidence reflecting that small voice service providers are responsible for a substantial portion of the illegal robocall problem. Transaction Network Services (TNS), a call analytics provider, asserted in a March 2021 report that given their disproportionate role originating robocalls, small voice service providers need to implement STIR/SHAKEN for the Commissions' rules ''to have a significant impact.'' Similarly, Robokiller, a spam call and protection service, concluded in a February 2021 report that because ''smaller carriers have exemptions lasting . . . until 2023 . . . [w]ithout a unified front from all carriers, STIR/SHAKEN cannot be completely effective.'' The Commission's analysis indicates that small providers are a substantial part of the problem. In the *Small Provider FNPRM,* we explained that we had reason to believe just one of the 19 providers that received letters from the Federal Trade Commission (FTC) in January 2020 for facilitating robocalls had more than 100,000 access lines.

3. No commenter disputed this evidence, and additional evidence indicating that some small voice service providers now are a major source of illegal robocalls supports this view. TNS released a follow-up report in September 2021, stating that ''only 4% of the high-risk calls in 1H2021 originated from the top six carriers . . . [reflecting] a significant drop from 11% in 2019 and down from 6% in 2020.'' It concludes that the small provider

extension ''has likely resulted in the increase of unwanted [voice over internet protocol] VoIP calls'' and, in the comments, argues that ''problematic robocalls increasingly are shifting to small carrier networks . . . [a]s large carriers continue to implement STIR/SHAKEN.'' No commenter disputed these conclusions or offered competing evidence suggesting a different conclusion.

4. We draw further support for our conclusion from the near-unanimous consensus in the record for shortening the STIR/SHAKEN extension for the subset of small voice service providers most responsible for illegally spoofed robocalls in order to better protect Americans. For example, the Competitive Carriers Association (CCA) argued that the ''Commission has reasonably proposed that the subset of small providers . . . responsible for a disproportionate amount of unlawful robocalls should not continue to benefit from the . . . extension.'' Similarly, TNS ''supports the Commission's proposal to accelerate the deployment deadline'' for ''those types of providers that are most closely associated with originating problematic calls.'' INCOMPAS agrees that ''[a]s the Commission indicates, it is a 'subset' of small voice service providers that are at a heightened risk of originating a significant percentage of illegal robocalls,'' that should be subject to a ''curtailment of the compliance extension.'' Others agreed the Commission should take action, and that the benefits of doing so will outweigh the costs. These comments underscore our conclusion that the benefits of a shortened extension for those providers at greatest risk of originating illegal robocalls far outweigh the costs of such action.

5. We therefore reject WTA-Advocates for Rural Broadband's (WTA) assertion that we should not place additional obligations on a subset of small voice service providers likely to be the source of illegal robocalls. WTA argues that doing so is ''premature'' and would lead to ''uncertaint[y].'' However, in a comment in response to the *Wireline Competition Bureau (WCB) Extension Public Notice (PN)* (86 FR 56705 (Oct. 12, 2021)) submitted after the comment cycle in the *Small Provider FNPRM* closed, WTA expressed support for retaining the extension for at least facilities-based providers but eliminating it for bad actors. We disagree. Many voice service providers have invested significant resources implementing STIR/SHAKEN, a technology that, when widely deployed, will offer substantial benefits to Americans by combating illegally spoofed calls. Implementation gaps undermine its effectiveness, however, especially when providers most likely to be the source of illegal robocalls are not participating in the framework. As Robokiller notes, the trends in illegal robocalls have not markedly improved, counseling against further delays. Indeed, the North American Numbering Council (NANC) recently explained that the failure of small voice service providers to implement STIR/SHAKEN ''negatively impacts the broader service provider ecosystem.'' Finally, we find that the clear rule we adopt today gives potentially-affected providers certainty as to their STIR/SHAKEN obligations.

B. Scope of Providers Subject to Shortened Extension

6. As detailed below, we require two categories of small voice service providers to implement STIR/SHAKEN before the June 30, 2023, extended implementation deadline: (1) Non-facilities-based providers, and (2) those providers that the Enforcement Bureau determined has, upon notice to a provider, failed to: Mitigate suspected illegal robocall traffic, provide information requested by the Enforcement Bureau, including credible evidence that they are in fact not originating such traffic, respond in a timely manner, or violated § 64.1200(n)(2) of the Commission's rules. In the *Small Provider FNPRM,* we proposed to shorten the extension for small voice service providers that ''originate an especially large amount of calls'' and therefore, we asserted, ''were at a heightened risk of being a source of unlawful calls.'' We sought comment on whether we should shorten the extension for providers that meet certain outgoing call thresholds or, as a proxy for originating a significant number of calls, meet a certain percentage of revenue by market segment. We also sought comment on alternative criteria for determining whether a provider is likely at a heightened risk of originating robocalls, including whether a provider does not offer voice service over physical lines to end-user customers or has violated our rules. After review of the record, we conclude that subjecting small voice service providers that do not offer voice service over physical lines to end-users or that have violated certain rules to a hastened STIR/SHAKEN implementation deadline will best protect Americans from illegal robocalls.

1. Non-Facilities-Based Small Voice Providers

7. We conclude that non-facilities-based small voice service providers are at a higher risk of originating illegal robocalls than other small voice service providers and should be subject to an accelerated STIR/SHAKEN implementation deadline. ACA Connects observes, based on its review of ''information that is publicly available . . . voice providers targeted by the Commission recently for facilitating illegal robocalls'' tend to be non-facilities-based providers. As ZipDX asserts, most providers originating a large number of robocalls are not facilities-based. In contrast to ''providers that deploy physical facilities ('lines') . . . to human end-users,'' ZipDX argues that there is a ''cottage industry of small VoIP providers'' that focus their business on calling services associated with illegal robocalls. Additional information reinforces the near-unanimous consensus in the record: All but one of the seven interconnected VoIP providers that both received letters from the Enforcement Bureau or FTC for their suspected involvement in illegal robocalling and submitted an FCC Form 477 offered VoIP not sold bundled with transmission service.

8. Conversely, the record convinces us that facilities-based small voice service providers are less likely than non-facilities-based providers to be the source of illegally spoofed robocalls. USTelecom, which established the Industry Traceback Group (ITG) that currently serves as the registered traceback consortium to conduct private-led traceback efforts, explains that ''[t]racebacks seldom conclude that a facilities-based provider, whether a large one or small one'' originate robocalls. We agree with NTCA-The Rural Broadband Association (NTCA) that ''[t]he risk of illegal robocalls being generated by [facilities-based] providers . . . would appear relatively low,'' because facilities-based providers are likely to offer voice and transmission services, so they are not focused solely on serving customers with services such as auto-dialing services used for illegal robocalls. In addition, as WTA notes, small facilities-based providers are ''familiar with their relatively small group of existing and potential customers,'' making it ''easy for them to stop, investigate, discourage or disconnect potential illegal robocallers.''

9. We also find that the burden of STIR/SHAKEN implementation for non-facilities-based small voice service providers is sufficiently low to make

earlier implementation by this subset appropriate in light of the substantial benefits that will flow from shortening the extension for these providers. As the NANC recently concluded, ''[i]n general, there are no significant barriers which prevent universal STIR/SHAKEN implementation for interconnected and non-interconnected VoIP providers (regardless of size).'' USTelecom observes that certifications in our Robocall Mitigation Database reflect that a substantial number of non-facilities-based small voice service providers have already partially or completely implemented the STIR/SHAKEN framework. This record evidence and conclusion corroborates the Commission's own data, which shows that non-facilities-based providers have been able to deploy STIR/SHAKEN more quickly than other providers. By cross-referencing FCC Registration Numbers (FRNs) of FCC Form 477 filers and Robocall Mitigation Database filers, we estimate that 328 out of 1,768 filers offer only VoIP voice service not bundled with transmission service. Of these 328 providers, 106 (32%) report complete STIR/SHAKEN implementation, 70 (21%) report partial implementation, and 152 (46%) report no implementation. By comparison, of the 1,440 remaining providers out of 1,768, 167 (12%) report complete implementation, 309 (21%) report partial implementation and 964 (67%) report no implementation. We note that it is possible that some providers with multiple FRNs may report their data differently across both databases. But there is no reason to believe that this fact would materially affect the percentages described above.

10. We recognize that not all non-facilities-based small voice service providers disproportionately originate illegal robocalls, nor are all voice service providers that disproportionately originate illegal robocalls non-facilities-based. Nevertheless, based on the undisputed evidence in the record, we conclude that the approach we adopt is tailored to identify only those small voice service providers reasonably likely to be originating illegal robocalls while also providing significant administrative advantages over alternative approaches. For this reason, we disagree with the National Consumer Law Center (NCLC) and Electronic Privacy Information Center (EPIC) who argued in their comments in response to the *WCB Extension PN,* filed after the docket in the *Small Provider FNPRM* closed, that we should not adopt a non-facilities-based approach because providers that are not in fact originating illegal robocalls might face a shortened extension. For example, as described in more detail below, the bright-line approach we adopt does not require providers to submit additional information to show whether they are non-facilities-based. Further, we note that no commenter has opposed shortening the extension for non-facilities-based providers, and several specifically supported this approach or supported retaining the extension for facilities-based providers.

11. *Definition.* We define a voice service provider as ''non-facilities based'' if it offers voice service to end-users solely using connections that are not sold by the provider or its affiliates. We adopt this definition for a ''non-facilities-based'' small voice service provider because it captures those providers that lack facilities-based voice connections, provides certainty to both affected voice service providers and the Commission, and has record support. While many commenters supported shortening the extension for non-facilities-based providers, ACA Connects suggested as an option the particular test we adopt here. A voice service provider's voice service that does not use connections sold by the provider or its affiliates, by definition, ''rides atop'' another provider's transmission service. Therefore, such voice service is not offered over the voice service provider's own facilities. A voice service provider readily knows whether it is offering voice service that relies on its own (or its affiliates') facilities or not, and therefore can easily determine whether it is subject to this definition.

12. This definition also tracks with information collected with respect to interconnected VoIP providers in the context of our FCC Form 477. In that collection, if a provider offers interconnected VoIP service, it must separately indicate on FCC Form 477 the number of interconnected VoIP service subscriptions (1) sold bundled with a transmission service carrying underlying VoIP service and (2) voice service not bundled for sale with a transmission service. We agree with ACA Connects that it is beneficial to examine such data to assist us in identifying ''non-facilities-based'' providers because it would ''enable the Commission to rely on resources already in its possession to determine which providers are subject to an earlier deadline and to track compliance.'' We further find that using FCC Form 477 as a reference to assist affected interconnected VoIP providers in determining whether they are subject to a reduced extension will ease compliance and limit uncertainty for affected small interconnected VoIP voice service providers. We note that one-way interconnected VoIP providers are subject to our STIR/SHAKEN rules but are not required to file FCC Form 477 because they do not fall within the relevant definition of ''interconnected VoIP,'' and FCC Form 477 data has traditionally been used for collecting deployment information for purposes unrelated to STIR/SHAKEN compliance. For these reasons, we believe an approach that uses FCC Form 477 data as a guide to determine whether a provider may be non-facilities-based, but not as an automatic trigger for a shortened extension, is the appropriate use of that data.

13. We decline to adopt NTCA's proposed new definition of ''facilities-based'' voice service provider, a modified version of the definition of ''facilities-based'' broadband provider in our rules. NTCA's novel and complex definition would place a higher compliance obligation on potentially-affected small voice service providers to determine whether they meet its terms, compared to our more straightforward definition, and NTCA has not explained why each component of its complex definition would accurately capture facilities-based voice service providers. We also decline to adopt ACA Connects's earlier suggestion that we base our definition on providing service to a ''relatively well-defined geographic area.'' ACA Connects does not explain its proposal in sufficient detail to evaluate its merits. To the extent ACA Connects is proposing to allow a provider to continue to receive an extension in certain geographic areas and not others, ACA Connects does not explain, nor can we identify, how to administer such a patchwork approach. For the same administrability concerns, we decline to adopt NCLC and EPIC's recommendation in their comments filed in response to the *WCB Extension PN* that we retain a two-year extension for a provider's voice services offered over its own facilities, while shortening the extension for a provider's voice services not offered over its own facilities.

14. We likewise decline to adopt NTCA's proposal that we require providers to file a certification or other additional data to demonstrate whether they are entitled to a continued extension. Mandating in this Order that providers certify their compliance would require further effort on the providers' part and cause non-facilities-based small voice service providers subject to the shortened timeline to

delay their implementation of the STIR/SHAKEN framework while the Commission seeks approval of the information collection associated with that certification requirement under the Paperwork Reduction Act. Moreover, relying on submitted data increases transparency and reduces ambiguity for providers and the Commission, facilitating administration and enforcement. Providers also have significant experience with filing FCC Form 477 voice data, increasing the likelihood that the information submitted is a true reflection of providers' operations. Providers have been submitting voice data in the same or similar format since at least 2013. While not all VoIP providers are required to file FCC Form 477 (*e.g.,* one-way VoIP providers), we conclude that the burden of requiring just those providers to submit similar data or certifications to take the place of FCC Form 477 data would outweigh the benefit of doing so.

15. *New Implementation Deadline.* Non-facilities-based small voice service providers must implement STIR/SHAKEN in the IP portions of their network by June 30, 2022. We conclude that a one-year curtailment is a ''reasonable period of time'' for this subset of small voice service providers to implement STIR/SHAKEN given the burdens and barriers to implementation they face and the likelihood they are the source of illegal robocalls. While we provided all small voice providers a two-year extension, we believe that this is a reasonable period for non-facilities-based providers to implement STIR/SHAKEN in light of recent marketplace progress to increase the availability of STIR/SHAKEN solutions and subsequent evidence that non-facilities-based providers are at an increased risk of originating illegal robocalls. We proposed this timeline in the *Small Provider FNPRM.* All commenters addressing the issue expressed support for this approach and none opposed it.

16. *Updating Extension Status.* We adopt our proposal in the *Small Provider FNPRM* to rely on the current rule requiring voice service providers to update their filings in the Robocall Mitigation Database. We conclude that this approach will limit any additional burden on providers while allowing the Commission to readily track each providers' extension status. Commenters also supported this approach. In the *Small Provider FNPRM,* we explained that the requirement, by its terms, would require small voice service providers subject to any shortened extension we adopt to: (1) Within 10 business days of the effective date of any Order we adopt, update their certifications and associated filings indicating that they are subject to a shortened extension; and (2) further update their certifications and associated filings within 10 business days of completion of STIR/SHAKEN implementation in the IP portions of their networks. Parties supported this proposal and did not suggest alternatives. Consistent with this current rule, non-facilities-based small voice service providers must update the database within 10 business days of the effective date of this Order to indicate they are no longer subject to a two-year extension and must implement STIR/SHAKEN by June 30, 2022 in the IP portions of their networks. For example, a provider could indicate in its certification that it is subject to a one-year extension for being a non-facilities-based small voice service provider. These providers, like other voice service providers, must also update their certifications and associated filings in the Robocall Mitigation Database within 10 business days of completion of STIR/SHAKEN implementation. Below, we make a non-substantive change to conform the text of the rule (47 CFR 64.6305(b)(5)) to paragraph 85 of the *Second Caller ID Authentication Report and Order* (85 FR 73360 (Nov. 17, 2020)) to make clear that providers have the duty to update their STIR/SHAKEN implementation status.

17. In light of the support for our proposal to update the Robocall Mitigation Database, we also take this opportunity to revise § 64.6305(b)(5) of our rules to conform its terms with the language of the *Second Caller ID Authentication Report and Order,* which served as the basis for our proposal. Section 64.6305(b)(5) requires voice service providers to update their certifications in the Robocall Mitigation Database when needed for accuracy. The adopted rule refers to updating the information required by § 64.6305(b)(2)–(4), but it inadvertently omitted the information that is part of Robocall Mitigation Database certification listed in § 64.6305(b)(1), which requires the voice service provider to certify whether it has completely, partially, or not implemented the STIR/SHAKEN authentication framework. The adopted rule is inconsistent with the text of the *Second Caller ID Authentication Report and Order* that requires providers to ''submit to the Commission via the appropriate portal any necessary updates to the *information they filed in the certification process* within 10 business days,'' which includes information required by paragraph (b)(1). Revised § 64.6305(b)(5) provides that a voice service provider must update, within 10 busines days of any change, all information originally submitted with its certification. We make this revision to align the rule with the text of the *Second Caller ID Authentication Report and Order* without seeking notice and comment pursuant to section 553(b)(3)(B) of the Administrative Procedure Act, which states that an agency may dispense with rulemaking if it finds that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' Here, notice and comment are not necessary because aligning § 64.6305(b)(5) with the statement of the rule in the *Second Caller ID Authentication Report and Order* does not alter the regulatory framework adopted by the *Second Caller ID Authentication Report and Order.*

18. *Enforcement.* We direct the Wireline Competition Bureau to send written notice to small voice service providers listed in the Robocall Mitigation Database (1) for which the most recent FCC Form 477 filing indicates that it is non-facilities-based and (2) that does not update its Robocall Mitigation Database certifications in a timely manner to indicate that it is no longer subject to an extension until June 2023. The Wireline Competition Bureau will also send written notice to those providers listed in the Robocall Mitigation Database and that did not file an FCC Form 477. The written notice shall provide the small voice service providers an opportunity to explain why they are not subject to the shortened extension (*i.e.,* they are a facilities-based provider). If, as a result of its inquiry, the Wireline Competition Bureau determines that the provider is non-facilities-based, has not complied with its duty to update its filings in the Robocall Mitigation Database, has not implemented STIR/SHAKEN by the appropriate deadline (*e.g.,* June 30, 2022 for non-facilities-based small voice service providers), or did not respond to the Wireline Competition Bureau's inquiry, we direct the Wireline Competition Bureau to refer the provider to the Enforcement Bureau, which may pursue an enforcement action as appropriate.

2. Small Voice Service Providers Found To Be the Source of Illegal Robocalls

19. We are also convinced by the record to require small voice service providers found by the Enforcement Bureau to have failed to, upon notice: Mitigate suspected illegal robocall traffic, provide information requested by the Enforcement Bureau, including

credible evidence that they are in fact not originating such traffic, respond in a timely manner or failed to meet their burden under § 64.1200(n)(2), to implement STIR/SHAKEN on an accelerated timeline. In the *Small Provider FNPRM,* we sought comment on whether to shorten the extension for those small voice service providers that have committed ''possible or actual violations of our rules or the law,'' and specifically asked whether we should ''authorize the Enforcement Bureau to curtail the extension for small voice service providers it notifies of illegal traffic under our rules.'' There is wide support in the record for shortening the extension for providers identified as a source of illegal robocalls. Commenters widely agree that penalizing perpetrators of illegal robocalls and ensuring that they implement caller ID authentication more swiftly than would otherwise be required is warranted. No party opposed shortening the extension for voice service providers the Enforcement Bureau finds to be a source of illegal robocalls.

20. We now direct the Enforcement Bureau to require an originating voice service provider suspected of being the source of illegal robocalls to implement STIR/SHAKEN on an accelerated timeframe if the Enforcement Bureau makes certain findings or determines it has violated § 64.1200(n)(2) of our rules. The Enforcement Bureau is authorized pursuant to § 0.111(a)(27) to provide written notice to a voice service provider identifying suspected illegal robocalls originating on the voice service provider's network. Under § 64.1200(n)(2) of our rules, the voice service provider must take specific steps as directed by the Enforcement Bureau in that written notice, including mitigating the origination of suspected illegal robocalls identified by the Enforcement Bureau. We direct the Enforcement Bureau to require the voice service provider to implement STIR/SHAKEN on an accelerated basis if it determines that the provider, following notice, fails to: Mitigate suspected illegal robocall traffic, provide information requested by the Enforcement Bureau including credible evidence that they are in fact not originating such traffic, respond in a timely manner or meet its burden under § 64.1200(n)(2) in responding to the Enforcement Bureau notice. In their comments filed in response to the *WCB Extension PN,* NCLC and EPIC agree that we should require voice service providers that fail to respond to a notice to mitigate suspected illegal robocall traffic to implement STIR/SHAKEN. However, together with ZipDX, they argue that we should go further and require voice service providers to implement STIR/SHAKEN *without* notice or the opportunity to respond to a Commission inquiry. For purposes of this rulemaking, we conclude that the approach we adopt—whereby we curtail the extension following a summary process—better captures those providers that are most likely to be originating unlawful robocalls than suggested alternatives that do not include this additional process. We do not, however, foreclose the possibility of applying this obligation when appropriate on a case-by-case basis. The voice service provider would be subject to an accelerated timeframe if (1) the voice service provider fails to respond to the notice within the timeframe the Enforcement Bureau requests or (2) the Enforcement Bureau determines that the provider's response is inadequate. A response may be considered inadequate if, for example, it does not reflect that the provider will ''promptly investigate the identified traffic'' or does not indicate that it has taken steps to ''effectively mitigate [the] illegal traffic.'' Shortening the extension for these providers complements and strengthens the existing obligations and purpose of § 64.1200(n)(2) to ''hold[] the notified voice service provider liable'' for failing to mitigate illegal traffic.

21. *New Implementation Deadline.* We direct the Enforcement Bureau to require a small voice service provider to implement STIR/SHAKEN within 90 days of the date of an Enforcement Bureau's determination described in the paragraph above. While an approximately six-month period starting from the effective date of this Order is an appropriate amount of time for non-facilities-based providers to implement STIR/SHAKEN, we require a shorter period for these providers identified as a source of illegal robocalls. More rapid STIR/SHAKEN implementation by these providers is likely to produce a greater public benefit than implementation by non-facilities-based providers that are at a higher risk of originating illegal robocalls, but have not been shown to have actually originated such calls. Rapid implementation for such providers was supported in the record because of the harm these providers present. Nevertheless, we decline to require implementation within 30 days as TNS proposes because of the possible practical difficulties providers may face in adhering to such an aggressive timetable. Requiring implementation of STIR/SHAKEN within 90 days of an Enforcement Bureau determination, half as long as the approximately six months given to non-facilities-based providers after release of this Order, ensures prompt implementation of this important technology by those providers that have failed to take specific steps to stop the origination of illegal robocalls. Because we provide a longer implementation timetable than TNS proposes, we see no need to adopt TNS' suggestion that we give identified providers an alternative option of ''submit[ting] a modified Robocall Mitigation Plan for Bureau approval'' in the event that its aggressive 30-day implementation timetable is not feasible. If the 90-day period would extend past an earlier implementation deadline (*i.e.,* June 30, 2022 for non-facilities-based providers and June 30, 2023 for all other small voice service providers), the earlier of the two deadlines applies.

22. *Updating Extension Status.* Consistent with our rule for non-facilities-based providers, providers identified as a source of illegal robocalls must, within 10 business days of an Enforcement Bureau determination described above, update their Robocall Mitigation Database filing indicating that they are subject to a shortened extension and update the database again once they have implemented STIR/SHAKEN. For example, a provider could indicate that it is subject to a 90-day extension because it was found to be the source of illegal robocalls. This approach limits providers' burden while allowing the Commission to track providers' extension status and was supported by commenters.

3. Alternative Approaches

23. We decline to adopt other criteria to identify those small voice service providers that will be subject to an accelerated STIR/SHAKEN implementation deadline. Though we proposed doing so in the *Small Provider FNPRM,* the record convinces us not to adopt criteria tied to the volume of calls originated by a small voice service provider or revenue by market segment. We do not adopt our original proposal to shorten the extension for those providers originating a large number of calls because we conclude that our chosen criteria better capture those providers at greatest risk of originating robocalls and because of the administrative benefits of our chosen approach. We agree with CCA that criteria based on calls-per-line and revenue ''require difficult line drawing'' and we have been unable to identify a readily administrable way to implement such an approach without ''risk[ing] sweeping in providers that are not the

intended target.'' As TNS notes, ''bad actors are adept at evading simple numerical thresholds'' and are increasingly doing so. We also fear that a volume-based approach could be subject to manipulation or evasion by bad actors. While INCOMPAS and WTA argue that the Commission should consider a volume-based approach, both concede that drawing a clear line would be difficult—and we find that the approach we adopt is more readily administrable and more likely to accurately capture voice service providers at heightened risk of originating illegal robocalls.

24. We sought comment in the *Small Provider FNPRM* on whether to shorten the extension for small voice service providers that offer certain services, such as caller ID spoofing or the ability to broadcast a pre-recorded message that illegal robocallers typically use to make large amounts of calls. While several commenters supported such an approach, no party suggested—nor are we able to identify—an administrable approach to distinguish between providers that offer such services for the purpose of illegal calling and those that do not.

25. We decline to adopt ACA Connects's suggestion that we shorten the extension only for non-facilities-based providers that have business models that correlate with origination of high volumes of illegal robocalls. ACA Connects does not explain with specificity how we would identify such business models, nor are we able to identify a reliable method of doing so. As a result, there is significant risk that any definition we adopt would exclude providers at heightened risk of originating illegal robocalls. We further do not adopt TNS's proposal or ACA Connects's suggestion to adopt a providers' offering of ''all-IP'' service as either one factor among several which alone would justify a shortened extension or one factor justifying a shortened extension only when present with other factors. While the evidence indicates that most robocalls come from providers offering IP voice service, the STIR/SHAKEN rules already apply only to IP-based voice service, and we do not wish to discourage the transition to all-IP networks. As NTCA notes, shortening the extension for all-IP providers would ''capture large numbers of small providers delivering lawful service to legitimate customers.'' Neither TNS nor ACA Connects explain how relying on an ''all-IP'' factor in combination with other factors in a single criterion would avoid these shortcomings. Indeed, ACA Connects notes that an ''all IP provider'' criterion ''is completely removed from any consideration of a voice providers' business practices and, as such, is even more likely to be overbroad than'' quantitative factors such as calls-per-line.

26. We do not adopt ''carve-outs'' or backstops to our non-facilities-based test as some commenters suggest. For the same reason we do not adopt a calls-per-line test in the first instance, we decline to adopt NTCA's alternative test to allow providers that are ''non-facilities-based'' to demonstrate that they meet a ''calls-per-line'' criterion to maintain their current extension; it would require the Commission to engage in difficult line-drawing. We find it unnecessary to consider carving out incumbent local exchange carriers (LECs) (or a subset of incumbent LECs) from the reduced extension for non-facilities-based providers because all incumbent LECs offer facilities-based service. We further see no need to adopt a specific procedural mechanism to allow providers subject to the accelerated implementation deadline to argue that they should nonetheless retain the full two-year extension. No party suggesting such a procedure identified why our existing processes are inadequate other than a conclusory assertion that a ''compressed time period'' makes such a process necessary. We disagree and note that voice service providers subject to a shortened extension may submit a waiver request. The Commission may exercise its discretion to waive a rule where the particular facts at issue make strict compliance inconsistent with the public interest. In considering whether to grant a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. We direct the Wireline Competition Bureau to act on any such requests expeditiously.

C. Legal Authority

27. We conclude that we have authority to curtail the extension for a subset of small voice service providers under section 4(b)(5)(A)(ii) of the TRACED Act. That section gives us authority to grant extensions of the caller ID authentication implementation deadline ''for a reasonable period of time'' upon a finding of ''undue hardship,'' and was the source of authority for the small voice service provider extension we today curtail for some providers. In the *Small Provider FNPRM,* we proposed to find authority under this section, and no party filed comments opposing our authority to do so. As proposed in the *Small Provider FNPRM,* we find that, in considering whether the hardship is ''undue'' under the TRACED Act—as well as whether an extension is for a ''reasonable period of time''—it is appropriate to balance the hardship of compliance due to the ''the burdens and barriers to implementation'' faced by a voice service provider or class of voice service providers with the benefit to the public of implementing STIR/SHAKEN expeditiously. We find we have the authority to grant a shorter extension for small voice service providers that present a higher risk of originating illegal robocalls or providers that may also face a lesser hardship than other small voice service providers. We further find revising the small provider extension in this way is consistent with our authority under section 4(b)(5)(F) of the TRACED Act, which expressly directs the Commission to consider revising or extending any granted extensions. Although the Commission directed the Wireline Competition Bureau to engage in an annual review of granted extensions, that delegation of authority does not prevent the Commission from separately exercising the authority granted to it under section 4(b)(5)(F) to ''consider revising or extending any delay of compliance.''

II. Final Regulatory Flexibility Analysis

28. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Caller ID Authentication Third Further Notice of Proposed Rulemaking* (*Small Provider FNPRM*). The Commission sought written public comments on the proposals in the *Small Provider FNPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

29. The *Fourth Report and Order* continues the Commission's efforts to combat illegal spoofed robocalls. Specifically, the *Fourth Report and Order* takes action to combat illegally spoofed robocalls by accelerating the date by which small voice service providers that are most likely to be the source of illegal robocalls must implement the STIR/SHAKEN caller ID authentication framework. We require non-facilities-based small voice providers to implement STIR/SHAKEN by June 30, 2022. We also require small voice service providers suspected of originating illegal robocalls to implement STIR/SHAKEN within 90 days of an Enforcement Bureau determination following a summary process. The procedures in the *Fourth*

Report and Order will help promote effective caller ID authentication through STIR/SHAKEN.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

30. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

31. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

32. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

33. 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 and by the rule revisions on which the proposal seeks comment, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

1. Wireline Carriers

34. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

35. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable North American Industry Classification System (NAICS) Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that there were 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

36. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

37. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

38. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicates that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

39. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains

a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' As of 2018, there were approximately 50,504,624 cable video subscribers in the United States. Accordingly, an operator serving fewer than 505,046 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

2. Wireless Carriers

40. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

41. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

42. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

3. Resellers

43. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications. They do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data from 2012 shows that 1,341 firms provided resale services for the entire year. Of that number, all of the firms operated with fewer than 1,000 employees. Thus, under this category and the associated SBA small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities.

44. *Toll Resellers.* The closest NAICS Code category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data from 2012 shows that 1,341 firms provided resale services for the entire year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated SBA small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

45. *Prepaid Calling Card Providers.* The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can

be considered small entities. According to the Commission's Form 499 Filer Database, 86 active companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these companies have 1,500 or fewer employees, however, the Commission estimates that the majority of the 86 active prepaid calling card providers that may be affected by these rules are likely small entities.

4. Other Entities

46. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications'', which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

47. None.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

48. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

49. The Commission considered the record submitted in response to the *Small Provider FNPRM* in crafting the final order. We evaluated comments with the goal of protecting consumers from illegal robocalls while minimizing the burden on small entities; specifically, small voice service providers. There was strong record support for shortening the extension to implement STIR/SHAKEN caller ID authentication for non-facilities-based small voice service providers and small voice service providers likely to be involved with originating illegal robocalls, and no party specifically opposed doing so. We conclude that, consistent with the TRACED Act, the public benefit of curtailing the two-year extension for these providers outweighs the burden.

50. We address the concerns of small entities by allowing facilities-based small voice service providers that are not likely to be involved with originating illegal robocalls to continue to benefit from a two-year extension, until June 30, 2023, to implement STIR/SHAKEN. We also decline to adopt criteria for shortening the extension that would have increased the burden on all small voice service providers. Nor do we require implementation of STIR/SHAKEN within 30 days after an Enforcement Bureau determination that a small voice service provider did not take the necessary steps in response to the Enforcement Bureau's notice or that the provider violated § 64.1200(n)(2) of our rules.

G. Report to Congress

51. The Commission will send a copy of the *Fourth Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Fourth Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Fourth Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Procedural Matters

52. *Paperwork Reduction Act of 1995 Analysis.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

53. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Small Provider FNPRM.* The Commission sought written public comment on the possible significant economic impact on small entities regarding proposals addressed in the *Small Provider FNPRM,* including comments on the IRFA. Pursuant to the RFA, a Final Regulatory Flexibility Analysis is set forth in Appendix B of the *Fourth Report and Order.* The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Fourth Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

54. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Fourth Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

55. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), 202–418–0432 (tty).

56. *Contact Person.* For further information about the *Fourth Report and Order,* contact Jonathan Lechter, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0984 or *jonathan.lechter@fcc.gov.*

III. Ordering Clauses

57. Accordingly, *it is ordered,* pursuant to sections 4(i), 4(j), 201(b), 227b, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201(b) 227b, and 303(r), that the *Fourth Report and Order is adopted.*

58. *It is further ordered* that pursuant to §§ 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1),

1.103(a), the *Fourth Report and Order shall be effective* 30 days after publication of the *Fourth Report and Order* in the **Federal Register**.

59. *It is further ordered* that part 64 of the Commission's rules *is amended* as set forth in Appendix A of the *Fourth Report and Order.*

60. *It is further ordered* that the Commission *shall send* a copy of the *Fourth Report and Order* to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

61. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Fourth Report and Order,* including the Final Regulatory Flexibility Analysis (FRFA), to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Carrier equipment, Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart HH—Caller ID Identification

■ 2. Section 64.6300 is amended by redesignating paragraphs (g) through (l) as paragraphs (h) through (m) and adding new paragraph (g) to read as follows:

§ 64.6300 Definitions.

* * * * *

(g) *Non-facilities-based small voice service provider.* The term ''non-facilities-based small voice service provider'' means a small voice service provider that is offering voice service to end-users solely using connections that are not sold by the provider or its affiliates.

* * * * *

■ 2. Section 64.6304 is amended by revising paragraph (a)(1) to read as follows:

§ 64.6304 Extension of implementation deadline.

(a) * * *

(1) Small voice service providers are exempt from the requirements of § 64.6301 through June 30, 2023, except that:

(i) A non-facilities-based small voice service provider is exempt from the requirements of § 64.6301 only until June 30, 2022; and

(ii) A small voice service provider notified by the Enforcement Bureau pursuant to § 0.111(a)(27) of this chapter that fails to respond in a timely manner, fails to respond with the information requested by the Enforcement Bureau, including credible evidence that the robocall traffic identified in the notification is not illegal, fails to demonstrate that it taken steps to effectively mitigate the traffic, or if the Enforcement Bureau determines the provider violates § 64.1200(n)(2), will no longer be exempt from the requirements of § 64.6301 beginning 90 days following the date of the Enforcement Bureau's determination, unless the extension would otherwise terminate earlier pursuant to paragraph (a)(1) introductory text or (a)(1)(i), in which case the earlier deadline applies.

* * * * *

■ 3. Section 63.6305 is amended by revising paragraph (b)(5) introductory text to read as follows:

§ 64.6305 Robocall mitigation and certification.

* * * * *

(b) * * *

(5) A voice service provider shall update its filings within 10 business days of any change to the information it must provide pursuant to paragraphs (b)(1) through (4) of this section.

* * * * *

[FR Doc. 2022–01244 Filed 1–24–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–130; RM–11897; DA 22–33; FR ID 67663]

Television Broadcasting Services Portland, Oregon

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On July 16, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by KPTV Broadcasting Corporation (Petitioner), the licensee of KPTV, channel 12, Portland, Oregon, requesting the substitution of channel 21 for channel 12 at Portland in the Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 21 for channel 12 at Portland.

DATES: Effective January 25, 2022.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 86 FR 43470 on August 9, 2021. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 21. Gray Television, Inc., which acquired the station, also filed comments in support of the petition and stating its commitment to apply for channel 21. In support of its channel substitution request, the Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service. In addition, the Petitioner has received numerous complaints of poor or no reception from viewers. Finally, the Petitioner demonstrated that the channel 21 noise limited contour would fully encompass the existing channel 12 contour, and an analysis using the Commission's *TVStudy* software indicates that Petitioner's proposal would result in an increase of 39,677 persons predicted to receive KPTV service and 499 persons that would gain a second over the air signal.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 21–130; RM–11897; DA 22–33, adopted January 12, 2022, and released January 12, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer

than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 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. In § 73.622(j), amend the Table of Allotments, under Oregon, by revising the entry for Portland to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
OREGON	
* * * * *	
Portland	*10, 21, 24, 25, 26, 32.
* * * * *	

[FR Doc. 2022–01311 Filed 1–24–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 220119–0030]

RIN 0648–BK10

Fisheries of the Northeastern United States; Southern Red Hake Rebuilding Plan; Framework Adjustment 62 to the Small-Mesh Multispecies Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements Framework Adjustment 62 for Whiting, Red Hake, and Offshore Hake to the Northeast Multispecies Fishery Management Plan. This action establishes a 10-year rebuilding plan, including a rebuilding schedule and change in possession limits for the overfished southern red hake stock. This action is necessary to meet the statutory requirements for an overfished stock and rebuilding plan consistent with the Magnuson-Stevens Fishery Conservation and Management Act. This action is intended to rebuild the southern red hake stock and help achieve optimum yield in the commercial fishery.

DATES: Effective January 25, 2022.

ADDRESSES: The New England Fishery Management Council developed an environmental assessment (EA) for this action that describes and analyzes these measures and other considered alternatives. Copies of Framework Adjustment 62, including the EA and information on the economic impacts of this rulemaking, are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/framework-62.*

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or available on the internet at: *http://www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Policy Analyst, 978–282–8456.

SUPPLEMENTARY INFORMATION:

Background

In January 2018, the southern red hake stock was declared overfished. To meet the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements of an overfished stock, a rebuilding plan and associated management measures are necessary to prevent overfishing, ensure adequate rebuilding, and help achieve optimum yield in the fishery. The New England Fishery Management Council took final action on Framework Adjustment 62 (Framework 62) to the Northeast Multispecies Fishery Management Plan at its June 2020 meeting and submitted the action to us in mid-August 2020. NMFS published a proposed rule on July 12, 2021 (86 FR 36519), with a comment period ending on July 27, 2021.

NMFS has approved all of the measures in Framework 62 recommended by the Council, as described below. This final rule establishes a 10-year rebuilding plan, including a rebuilding schedule and change in possession limits for the overfished southern red hake stock. The Magnuson-Stevens Act allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here.

Southern Red Hake Rebuilding Schedule

This action establishes a 10-year rebuilding schedule for southern red hake. Under this rebuilding program, catch limits will be established by reducing the acceptable biological catch (ABC) to 75 percent of the fishing mortality rate at maximum sustainable yield (F_{MSY}) for the duration of the rebuilding period, or until the stock reaches its biomass target, whichever happens first. In past years, the ABC has been set at 90 percent or higher of the F_{MSY}, consistent with the Council's Scientific and Statistical Committee recommendations.

Changes to Southern Red Hake Possession Limits

This action will also decrease the trip possession limit from 5,000 lb (2,268 kg) to a dual 1,000-lb/600-lb (453.6-kg/272.2-kg) possession limit based on the selectivity of the gear type or mesh size being used (Table 1). The 600-lb (272.2-kg) possession limit will apply to

standard small-mesh trawls (less than 5.5-inch (13.97-cm) square or diamond mesh), which are less selective, while the 1,000-lb (453.6-kg) possession limit will apply to large-mesh trawls and other more selective gear types. In addition, the 1,000-lb (453.6-kg) possession limit applies to vessels when using gears other than trawls. These small-mesh selective gear types include raised-footrope trawls, large-mesh belly panel trawls, and rope separator trawls. The reduced possession limits are intended to reduce landings and catch and to incentivize fishermen to use gear and gear configurations that reduce the catch of red hake.

TABLE 1—LIST OF GEARS AND ASSOCIATED POSSESSION LIMITS

Gear used	Possession limit
Small-mesh trawls <5.5-in (13.97-cm) square or diamond mesh	600-lb (272.2-kg).
Large mesh trawls ≥5.5-in (13.97-cm) square or diamond mesh and small-mesh selective gear trawls (raised-footrope trawls, large-mesh belly panel trawls, and rope separator trawls).	1,000-lb (453.6-kg).
Gear other than trawl	1,000-lb (453.6-kg).

The in-season accountability measure will remain in place, which reduces the possession limit to 400 lb (181 kg) for all vessels when the total landings reach or exceed the total allowable landings (TAL) trigger of 40.4 percent of the annual catch limit (ACL). The Regional Administrator may deem other gears as selective based on an evaluation of their ability to adequately reduce the catch of red hake and would announce such a decisions through issuance of a rule in the **Federal Register** consistent with the process defined at 50 CFR 648.86(d)(1)(v)(B)(2).

Proposed Rule Comments and Responses

We received one relevant comment on the proposed rule during the public comment period. This commenter stated that all small-mesh fisheries should have restrictions on the length of wire used to deploy fishing nets as a means of catch control. The commenter also noted that excessive amounts of wire used on gear in the southern red hake fishery are contributing to the higher catches, whereas in the northern red hake fishery, vessels are required to use the raised-footrope trawl which has restrictions on wire length. The requirement to use a raised-footrope trawl was implemented in the northern fishery as a means to reduce bycatch of other regulated species under the Northeast Multispecies FMP. Currently for southern red hake there are no gear restrictions in place restricting the length of wire that is allowed because the same concern does not exist. This action implements a higher reduced possession limit for fishermen that use more selective gear types such as the raised-footrope trawl when fishing for southern red hake, which is intended to incentivize the use of more selective gear. The Council could consider additional gear restrictions for the fishery and FMP in a future action, if it chooses, and if additional conservation and management measures are necessary.

Changes From the Proposed Rule

This final rule contains one clarifying change in addition to what was contained in the proposed rule. Under section 305(d) of the Magnuson-Stevens Act, we are also making one clarifying change to a provision in the regulations on the Raised Footrope Trawl Whiting Fishery Exemption Area to ensure that the language of that provision is consistent with Framework Adjustment 35 to the Northeast Multispecies FMP (see November 19, 2002, final rule (67 FR 69694) modifying the regulations implementing Framework Adjustment 35 at 50 CFR 648.80). In preparing this final rule, we noticed that this provision in the regulations, as currently drafted, could be confusing as to the timeframe when the eastern portion of the exemption area opens for fishing.

Currently, § 648.80(a)(15)(i)(F) states that ''Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.'' This final rule adds the words ''continue to'' after ''except that it may'', and replaces ''from November 21'', with the phrase '', which remains open''. This change clarifies that the eastern portion opens on September 1, when the entire exemption area opens, and remains open through December 31. This clarifying correction does not change any management measures associated with this Exemption Area; it only clarifies the dates that fishing would be open in the exemption area, consistent with the intent of Framework Adjustment 35, as described in previous rulemaking actions (see the final rule at 67 FR 69694; November 19, 2002). Because the public had opportunity to comment on these management measures during the rulemaking process for Framework Adjustment 35, and because we are making only a minor, clarifying correction to the existing regulations, additional public comment is not necessary.

Classification

NMFS is issuing this rule pursuant to Section 304(b)(1)(A) of the Magnuson-Stevens Act, which provides specific authority and procedure for implementing this action. NMFS is also issuing clarify regulatory text to a previously implemented Framework Adjustment pursuant to section 305(d). The NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

This final rule does not contain policies with federalism or ''takings'' implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject to the Paperwork Reduction Act.

The Assistant Administrator for Fisheries has determined that there is good cause to waive the 30-day delay in the date of effectiveness in accordance with 5 U.S.C. 553(d)(3) of the Administrative Procedure Act. This action must be in place prior to a separate action to implement the 2021–2023 small-mesh multispecies specifications (see the proposed rule at 86 FR 31262; June 11, 2021), which would increase the ACL for southern red hake. The 2021 fishing year began on May 1, 2021, and the small-mesh multispecies fishery is operating under default specifications. In the separate action, the Council recommends an 89 percent increase in the 2021 catch limits for southern red hake based on data seen in the NMFS trawl surveys; the Council recommended implementing

this increase in the catch limit as soon as possible, basing its recommendation on the most recent stock assessment data that the Council also used in developing the rebuilding plan implemented by this final rule. A 30-day delay in the date of effectiveness would postpone the implementation of this final rule, and, hence the implementation of the final 2021 specifications that rely on this action, and would be contrary to the public interest. The delay could create confusion and potential economic harm to the small-mesh multispecies fishery due to lost opportunity under the current, lower catch limit, and due to the potential triggering of unnecessary accountability measures for southern red hake early in the year under the current, lower catch limits. In addition a 30-day delay in the date of effectiveness would not benefit the regulated parties, as no additional time is required to come into compliance with this final rule. Complying with this final rule simply means adhering to the new possession limits and management measures set in this action. Fishery stakeholders have also been involved in the development of this action, and are anticipating the issuance of this rule. For all of these reasons, NMFS finds that the need to implement these measures in a timely manner constitute good cause to waive the 30-day delay in this final rule's date of effectiveness.

For similar reasons, and to avoid confusion, NMFS finds good cause to waive the 30-day delay in the date of effectiveness with respect to this final rule's change from the proposed rule, as described above in the Changes From the Proposed Rule section, because the change simply clarifies a potentially confusing regulatory provision and does not amend any management measures.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 19, 2022.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.80, revise paragraph (a)(15)(i)(F) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(15) * * *

(i) * * *

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may continue to occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area, which remains open through December 31 of each fishing year.

* * * * *

■ 3. In § 648.86, add paragraph (d)(1)(v) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(1) * * *

(v) *Possession of southern red hake while under a rebuilding plan.* When the southern red hake stock, defined as statistical areas 525–526, 533–534, 541–543, 537–539, 562, 611–616, 621–623, 625–628, 631–634, 635–638, is under a rebuilding plan, the year-round possession limit for southern red hake shall be the following:

(A) *Vessels possessing on board or using nets of mesh size smaller than 5.5 in (13.97 cm).* Owners and operators of vessels may possess and land no more than 600 lb (272 kg) of southern red hake per trip when:

(*1*) Using trawls with diamond or square mesh size less than 5.5 in (13.97 cm); and/or

(*2*) A vessel is in possession of a net with mesh size smaller than 5.5 in (13.97 cm), unless it is properly stowed and not available for immediate use in accordance with § 648.2 and not used on that trip.

(B) *Vessels using nets of mesh size greater than or equal to 5.5 in (13.97 cm), using small-mesh selective trawls, or gear other than trawl.* Owners and operators may possess and land no more than 1,000 lb (453 kg) of southern red hake per trip when:

(*1*) Using trawls with diamond or square mesh size 5.5 in (13.97 cm) or larger;

(*2*) Using small-mesh selective gear, including raised-footrope trawls as defined in § 648.80(a)(9)(ii), large-mesh belly panel trawls as defined in § 648.84(f), rope separator trawls as defined in § 648.84(e), and other selective gears deemed by the Regional Administrator to adequately reduce the catch of red hake; or

(*3*) When using gears other than trawls.

* * * * *

■ 4. In § 648.90, revise paragraphs (b)(2) introductory text and (b)(2)(i) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(b) * * *

(2) *Process for specifying ABCs, ACLs, and TALs.* The Whiting PDT shall calculate the OFL and ABC values for each small-mesh multispecies stock based on the control rules established in the FMP. These calculations shall be reviewed by the SSC and guided by terms of reference developed by the Council. The ACLs and TALs shall be calculated based on the SSC's approved ABCs, as specified in paragraphs (a)(2)(i)(A) through (C) and (a)(2)(ii)(A) through (C) of this section.

(i) *Red hake*—(A) *ABCs.* (*1*) The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of red hake. The red hake ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFL.

(*2*) While the southern red hake stock is under a rebuilding plan, the ABC for that stock shall be set to 75-percent of the OFL for the duration of the rebuilding period or until the stock reaches its biomass target, whichever occurs first.

(B) *ACLs.* The red hake ACLs are equal to 95 percent of the corresponding ABCs.

(C) *TALs.* (*1*) The red hake TALs are equal to the northern red hake and southern red hake ACLs minus a discard estimate based on the most recent 3 years of data and then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(*2*) If more than two-thirds of the southern red hake TAL is harvested in a single year, the Regional Administrator shall consult with the Council and will consider implementing quarterly TALs in the following fishing year, as prescribed in the FMP and in a manner consistent with the requirements of the Administrative Procedure Act.

* * * * *

[FR Doc. 2022–01389 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 220119–0025; RTID 0648–XX076]

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Final 2022 Atlantic Deep-Sea Red Crab Specifications

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

ACTION: Final rule.

SUMMARY: We are finalizing specifications for the 2022 Atlantic deep-sea red crab fishery, including an annual catch limit and total allowable landings limit. This action is necessary to fully implement previously projected allowable red crab harvest levels that will prevent overfishing and allow harvesting of optimum yield. This action is intended to establish the allowable 2022 harvest levels, consistent with the Atlantic Deep-Sea Red Crab Fishery Management Plan.

DATES: The final specifications for the 2022 Atlantic deep-sea red crab fishery are effective March 1, 2022, through February 28, 2023.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION: The Atlantic deep-sea red crab fishery is managed by the New England Fishery Management Council. The Atlantic Deep-Sea Red Crab Fishery Management Plan includes a specification process that requires the New England Fishery Management Council to recommend an acceptable biological catch, an annual catch limit, and total allowable landings every four years. Collectively, these are the red crab specifications. Prior to the start of fishing year 2020, the Council recommended specifications for the 2020–2023 fishing years (Table 1).

TABLE 1—COUNCIL-APPROVED 2020–2023 RED CRAB SPECIFICATIONS

	Metric ton	Million lb
Acceptable Biological Catch	2,000	4.41
Annual Catch Limit	2,000	4.41
Total Allowable Landings	2,000	4.41

On April 14, 2020, we approved the Council-recommended specifications for the 2020 fishing year, effective through February 28, 2021, and we projected the continuation of those specifications for 2021–2023 (85 FR 20615). At the end of each fishing year, we evaluate catch information and determine if the quota has been exceeded. If a quota is exceeded, the regulations at 50 CFR 648.262(b) require a pound-for-pound reduction in a subsequent fishing year. We have reviewed available 2021 fishery information against the projected 2022 specifications. There have been no annual catch limit or total allowable landings overages, nor is there any new biological information that would require altering the projected 2022 specifications published in 2020. Based on this information, we are finalizing specifications for fishing year 2022, as projected in the 2020 specifications rule, and outlined above in Table 1. These specifications are not expected to result in overfishing, and they adequately account for scientific uncertainty.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Deep-Sea Red Crab Fishery Management Plan, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This rule is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), we find good cause to waive prior public notice and opportunity for public comment on the catch limit and allocation adjustments, because allowing time for notice and comment is contrary to the public interest. The proposed rule for the 2020–2023 specifications provided the public with the opportunity to comment on the specifications, including the projected 2021 through 2023 specifications (85 FR 9717, February 20, 2020). We received no comments on the proposed rule announcing the projected 2021–2023 specifications and the process for announcing finalized interim year quotas. Further, this final rule contains no changes from the projected 2022 specifications that were included in both the February 20, 2020, proposed rule and the April 14, 2020, final rule. The public and industry participants expect this action. Through both the proposed rule for the 2020–2023 specifications and the final rule for the 2020 specifications, we alerted the public that we would conduct a review of the latest available catch information in each of the interim years of the multi-year specifications and announce the final quota prior to the March 1 start of the fishing year. Thus, the proposed and final rules that contained the projected 2021–2023 specifications provided a full opportunity for the public to comment on the substance and process of this action.

The Chief Counsel for Regulation, Department of Commerce, previously certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that the 2020–2023 red crab specifications would not have a significant economic impact on a substantial number of small entities. Implementing the 2022 specifications will not change the conclusions drawn in that previous certification to the SBA. Because advance notice and the opportunity for public comment are not required for this action under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* do not apply to this rule. Therefore, no new regulatory flexibility analysis is required and none has been prepared.

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 19, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–01391 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210210–0018]

RTID 0648–XB729

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2022 total allowable catch of Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA.

DATES: Effective 1,200 hours, Alaska local time (A.l.t.), January 20, 2022, through 1,200 hours, A.l.t., June 10, 2022.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7241.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 A season allowance of the 2022 Pacific cod total allowable catch (TAC) apportioned to catcher vessels using trawl gear in the Central Regulatory Area of the GOA is 3,710 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish in the GOA (86 FR 10184, February 19, 2021) and inseason adjustment (86 FR 74384, December 30, 2021).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2022 Pacific cod TAC apportioned to catcher vessels using trawl gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,610 mt and is setting aside the remaining 1,100 mt as bycatch to support other anticipated groundfish fisheries. 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 Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA.

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 closure of Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 18, 2022.

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: January 19, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–01371 Filed 1–20–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 16
Tuesday, January 25, 2022

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No.: AMS–SC–21–0049; SC21–925–2]

Amendments to the Marketing Order of Grapes Grown in a Southeastern California

AGENCY: Agricultural Marketing Service (AMS), Department of Agriculture (USDA).

ACTION: Proposed rule and referendum order.

SUMMARY: This rulemaking proposes amendments to Marketing Order No. 925, which regulates the handling of grapes grown in a designated area of southeastern California. The proposed amendments would change the California Desert Grape Administrative Committee's (Committee) size, and its quorum and voting requirements.

DATES: The referendum will be conducted from February 14 through March 4, 2022. The representative period for the referendum is January 1 through December 31, 2021.

ADDRESSES: Interested persons with questions and comments are invited to submit written questions and comments to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; or Telephone: (202) 720–2491.

FOR FURTHER INFORMATION CONTACT: Pushpa Kathir, Marketing Specialist, or Matthew Pavone, Rulemaking Services Branch Chief, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Pushpa.Kathir@usda.gov* or *Matthew.Pavone@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j) are proposed. This proposal is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California. Part 925 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of grape producers and handlers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. The Agricultural Marketing Service (AMS) has determined this proposed rule is unlikely to 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.

This proposal has also been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering grapes grown in a designated area of southeastern California.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608 (15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendments, potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed herein are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order.

The Committee unanimously recommended the amendments following deliberations at a public meeting on April 13, 2021. This proposal would amend the Order by

changing the Committee's size, and its quorum and voting requirements.

A proposed rule soliciting comments on the proposed amendments was published in the **Federal Register** on August 13, 2021 (86 FR 44644). Two comments were received in support of the proposed amendments, so no changes will be made to the proposed amendments.

AMS will conduct a producer referendum to determine support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendments, if they are favored by producers in the referendum.

Proposal 1—Reduce Committee Size

§ 925.20 provides that the Committee consists of 12 members and, for each member of the Committee, there must be an alternate who has the same qualifications as the member. This proposal would amend § 925.20 by reducing the size of the Committee from 12 to 10 members. The requirement that each member has an alternate with the same qualifications as the member would remain unchanged. Four members and their alternates would be producers or officers or employees of producers (producer members). Four members and their alternates would be handlers or officers or employees of handlers (handler members). One member and alternate would be either a producer or handler or officer or employee thereof. One member and alternate would represent the public.

Since promulgation of the Order in 1980, the California table grape industry has seen reductions of about 55 percent of its producers and 58 percent of its registered handlers, which makes it difficult to find eligible members to fill all positions on the Committee. Industry consolidation and land development pressure due to conversion of lands for residential and commercial uses have contributed to this decline. Decreasing the Committee's size from 12 members to 10 members would make Committee membership more reflective of today's industry and enable the Committee to fill all its member positions without difficulty.

Proposal 2—Revise Quorum and Voting Requirements

Currently, § 925.30 states that eight members of the Committee shall constitute a quorum, and any action of the committee shall require at least eight concurring votes.

The proposed change would modify § 925.30 to allow six members to constitute a quorum including, at a minimum, one producer member and one handler member, with six concurring votes required to pass any motion or approve any Committee action.

The Committee is experiencing difficulties filling member seats and obtaining a quorum at meetings to conduct business activities. Adjusting current requirements would enable the Committee to operate fully, mitigating the risk of not establishing a quorum during scheduled meetings and not having the required votes to pass any action. These changes would help to streamline the Committee's operations and increase its effectiveness.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of no more than $1,000,000. Small agricultural service firms (handlers) are defined as those with annual receipts of no more than $30,000,000.

Proposed amendments to the Order would reduce the number of members and alternates seats on the Committee from 12 to 10 and reduce the quorum and voting requirements from 8 to 6 members. These amendments are necessary to reflect the industry's consolidation. Since promulgation of the Order in 1980, the California table grape industry has lost roughly 55 percent of its producers and 58 percent of its registered handlers.

Committee reports that there are 21 producers and 10 handlers of table grapes in the production region. Committee packout reports show that average annual packout for 2018 through 2020 was 3.2127 million 18-pound containers, equivalent to 28,914 tons. The 3-year average of California fresh table grape prices was $1,267 per ton. Multiplying quantity by price yields an annual average crop value estimate of $36.634 million. Dividing the average crop value estimate by the number of producers (21) yields an average crop value per producer of $1.744 million, moderately larger than the SBA small farm size threshold of $1,000,000. Therefore, using the estimated prices, packout volume, and number of producers and assuming a normal bell-curve distribution of receipts among producers, AMS estimates the majority of producers would qualify as large businesses under the SBA definition.

Dividing the average crop value of $36.634 million by the number of handers (10) yields a per-handler estimate of $3.663 million, well below the SBA small business threshold of $30,000,000 in annual receipts. However, that computation measures handler annual receipts using producer-level crop value data, since AMS is unable to locate an estimate of a handler margin. A range of handler margin estimates would be 30 to 40 percent above the grower price. Applying those two percentages, a range of handler annual receipts estimates would be $4.8 to $5.1 million, still well below $30,000,000. Therefore, using these estimated prices, utilization volume, handler margin estimates and number of handlers, AMS estimates that the majority of handlers would meet the SBA definition of small businesses.

AMS has determined that the proposed amendments would not have a significant impact on a substantial number of small businesses. Both large and small entities would be expected to benefit from the Committee's improved ability to address important issues on a timely basis. The proposed reduction in the number of seats on the Committee, and the reduced quorum and voting requirements, would not require any significant changes in producer or handler business operations, and no significant industry educational effort would be needed. Producers and handlers, large and small would incur no additional costs. No small businesses would be unduly or disproportionately burdened.

The Committee unanimously recommended the proposed amendments at a public meeting on April 13, 2021. If these proposals are approved in a referendum, there would be no direct financial effects on producers or handlers. However, these proposed changes would have indirect financial effects—decreased administrative costs to producers and Committee staff stemming from fewer resources required to the annual preparation of multiple nomination notices and meetings, and reduced travel expenses associated with carrying out annual duties.

Since 1980, the number of producers and handlers operating in the industry has decreased, which makes it difficult to find enough members to fill positions on the Committee. Decreasing the Committee's size would make it more reflective of today's industry. No

economic impact is expected if the proposed amendments are approved because they would not establish any new regulatory requirements on handlers, nor would they have any assessment or funding implications. There would be no change in financial costs associated with reporting or recordkeeping requirements if this proposal is approved.

Alternatives to this proposal, including making no changes at this time, were considered by the Committee. Due to changes in the industry, AMS believes the proposals are justified and necessary to ensure the Committee's ability to locally administer the program. Reducing the size of the Committee would enable it to satisfy membership, and quorum and voting requirements fully, thereby ensuring a more efficient and orderly flow of business.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California table grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's meetings are widely publicized throughout the southeastern California table grape production area. All interested persons are invited to attend the meetings, whether held virtually or in-person, and encouraged to participate in Committee deliberations on all issues. As with all Committee meetings, the April 13, 2021, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposed amendments.

A proposed rule concerning this action was published in the **Federal Register** on August 13, 2021 (86 FR 44644). A copy of the rule was sent via email to the Committee Manager for disposal to all Committee members and California table grape handlers. Finally, the proposed rule was made available by USDA through the internet and the office of the Federal Register. A 60-day comment period ending October 12, 2021, was provided to allow interested persons to respond to the proposal. Two comments were received during the comment period, both of which were in support of the proposed amendments. However, one commentor was concerned that the restructure of the Committee might limit the participation of interested parties in the industry. Further, the commentor suggested adding a requirement for periodic review of the Committee structure to the regulations.

USDA and the Committee encourage the participation of all eligible interested parties in the administration of the Order. The proposed restructuring of the Committee is not intended to limit the participation of individuals on the Committee, but rather to reflect the current industry demographic and to facilitate the ability of the Committee to function moving forward. Furthermore, the Committee has the ability to recommend changes to the Committee structure when it is deemed appropriate, and the addition of a regulatory review requirement is not necessary. As such, no changes will be made to the amendments as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

The findings and conclusions, and general findings and determinations included in the proposed rule set forth in the August 13, 2021, issue of the **Federal Register** are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of Grapes Grown in a Designated Area of Southeastern California.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered that this entire proposed rule be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 through 900.407) to determine whether the annexed order amending the Order regulating the handling of grapes grown in a designated area of southeastern California is approved by growers, as defined under the terms of the Order, who during the representative period were engaged in the production of grapes in the production area. The representative period for the conduct of such referendum is hereby determined to be January 1, 2021, through December 31, 2021.

The agents designated by the Secretary to conduct the referendum are Jeffery Rymer and Gary D. Olsen, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Jeffery.Rymer@usda.gov* or *GaryD.Olsen@usda.gov,* respectively.

Order Amending the Order Regulating the Handling of Grapes Grown in a Designated Area of Southeastern California [1]

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 925; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 925 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 925 as hereby proposed to be amended regulates the handling of grapes grown in a designated area of southeastern California and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 925 as hereby proposed to be amended is limited in

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 925 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of grapes produced or packed in the production area; and

5. All handling of grapes produced or packed in the production area as defined in Marketing Order 925 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of grapes grown in a designated area of southeastern California shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the Order contained in the proposed rule issued by the Administrator and published in the **Federal Register** (86 FR 44644) on August 13, 2021, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 925 as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 925.20, revise paragraph (a) to read as follows:

§ 925.20 Establishment and membership.

(a) There is hereby established a California Desert Grape Committee consisting of 10 members, each of whom shall have an alternate who shall have the same qualifications as the member. Four of the members and their alternates shall be producers, or officers or employees of producers (producer members). Four of the members and their alternates shall be handlers, or officers or employees of handlers (handler members). One member and alternate shall be either a producer or handler, or an officer or employee thereof. One member and alternate shall represent the public.

* * * * *

■ 3. In § 925.30, revise paragraph (a) to read as follows:

§ 925.30 Procedure.

(a) Six members of the committee shall constitute a quorum, including at a minimum one producer member and one handler member, and any action of the committee shall require at least six concurring votes.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0035 and EERE–2021–TP–0036]

Energy Conservation Program: Test Procedure and Energy Conservation Standards for Consumer Products; Consumer Air Cleaners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is initiating rulemaking activities to consider potential test procedure and energy conservation standards for consumer air cleaners. Through this request for information (''RFI''), DOE seeks data and information regarding development and evaluation of a new test procedure that would be reasonably designed to produce test results which reflect energy use during a representative average use cycle for the product without being unduly burdensome to conduct. Additionally, this RFI solicits information regarding the development and evaluation of potential new energy conservation standards for consumer air cleaners, and whether such standards would result in significant energy savings, be technologically feasible and economically justified. DOE also welcomes written comments from the public on any subject within the scope of this document (including those topics not specifically raised), as well as the submission of data and other relevant information.

DATES: Written comments and information are requested and will be accepted on or before February 24, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–STD–0035 and EERE–2021–BT–TP–0036, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *AirCleaners2021STD0035@ee.doe.gov* or *AirCleaners2021TP0036@ee.doe.gov.* Include docket number EERE–2021–BT–STD–0035 and EERE–2021–BT–TP–0036 in the subject line of the message.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Coronavirus disease 2019 (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web pages can be found at: *www.regulations.gov/docket/EERE–2021–BT–TP–0036 and www.regulations.gov/docket/EERE–2021–BT–STD–0035.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section IV for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

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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.*

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I. Introduction

Consumer air cleaners are not currently subject to a DOE test procedure or energy conservation standards. On September 16, 2021, DOE published a notice of proposed determination (''NOPD'') in which DOE tentatively determined that consumer air cleaners qualify as a ''covered product'' under the Energy Policy and Conservation Act, as amended (''EPCA'') [1] (''September 2021 NOPD''). 86 FR 51629. DOE tentatively determined in the September 2021 NOPD that coverage of consumer air cleaners is necessary or appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for consumer air cleaners is likely to exceed 100 kilowatt-hours (''kWh'') per year. *Id.*

The following sections discuss DOE's authority to establish test procedures and energy conservation standards for covered products, relevant background information regarding DOE's consideration of establishing federal regulations for consumer air cleaners, if DOE determines such products are covered products, and a discussion of DOE's rulemaking process for test procedures and energy conservation standards.

A. Statutory Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain products, referred to as ''covered products.'' [3] In addition to specifying a list of consumer products that are covered products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. To classify a consumer product as a covered product, the Secretary must determine that:

(1) Classifying the product as a covered product is necessary or appropriate to carry out the purposes of EPCA; and

(2) The average annual per household [4] energy use by products of such type is likely to exceed 100 kWh (or British thermal unit (''Btu'') equivalent) per year. (42 U.S.C. 6292(b)(1)) As stated, DOE has preliminarily determined that consumer air cleaners are covered products. 86 FR 51629.

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] The enumerated list of covered products is at 42 U.S.C. 6292(a)(1)–(19).

[4] DOE has defined ''household'' to mean an entity consisting of either an individual, a family, or a group of unrelated individuals, who reside in a particular housing unit. For the purpose of this definition:

(1) *Group quarters* means living quarters that are occupied by an institutional group of 10 or more unrelated persons, such as a nursing home, military barracks, halfway house, college dormitory, fraternity or sorority house, convent, shelter, jail or correctional institution.

(2) *Housing unit* means a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, but does not include group quarters.

(3) *Separate living quarters* means living quarters:

(i) To which the occupants have access either:

(A) Directly from outside of the building, or

(B) Through a common hall that is accessible to other living quarters and that does not go through someone else's living quarters, and

(ii) Occupied by one or more persons who live and eat separately from occupant(s) of other living quarters, if any, in the same building. 10 CFR 430.2.

standards promulgated under EPCA. (42 U.S.C. 6295(s))

In 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. Specifically, EPCA provides that DOE may, in accordance with certain requirements, prescribe test procedures for any consumer product classified as a covered product under section 6292(b). (42 U.S.C. 6293(b)(1)(B)) EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a given type of covered product during a representative average use cycle and must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, EPCA requires DOE to amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor. (42 U.S.C. 6295(gg)(2)(A)) When doing so, DOE must take into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission (''IEC''), unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*)

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed, the Secretary shall promptly publish in the **Federal Register** a proposed test procedure and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such a procedure. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and no more than 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) In prescribing a new or amended test procedure, DOE must follow the statutory criteria of 42 U.S.C. 6293(b)(3)–(4), as discussed further in section I.C of this document, and follow the rulemaking procedures set out in 42 U.S.C. 6293(b)(2). Before prescribing any final test procedure, the Secretary must publish a proposed test procedure in the **Federal Register**, and afford interested persons an opportunity (of not less than 60 days' duration) to present oral and written data, views, and arguments on the proposed test procedure. (42 U.S.C. 6293(b)(2)).

Similarly, DOE must follow specific statutory criteria for prescribing new or amended standards for covered products. Following a coverage determination, DOE may prescribe an energy conservation standard for any type (or class) of covered products of a type specified in section 6292(a)(20) of EPCA, if the substantive and procedural requirements of 42 U.S.C. 6295(o) and (p) are met and the Secretary determines that: (1) The average per household energy use within the United States by products of such type (or class) exceeded 150 kWh (or its Btu equivalent) for any 12-month period ending before such determination; (2) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kWh (or its Btu equivalent) for any such 12-month period; (3) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and (4) the application of a labeling rule under section 6294 of this title to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1)) Further, any new or amended standard for covered products of a type specified in paragraph (20) of section 6292(a) of this title shall not apply to products manufactured within 5 years after the publication of a final rule establishing such standard. (42 U.S.C. 6295(1)(2)

Further, EPCA requires that any new or amended energy conservation standard prescribed by the Secretary be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) The Secretary may not prescribe an amended or new standard that will not result in significant conservation of energy, or is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)) DOE must evaluate proposed new standards against the criteria of 42 U.S.C. 6295(o), as described further in section I.D of this document, and follow the rulemaking procedures set out in 42 U.S.C. 6295(p). DOE is publishing this RFI consistent with its authority and these obligations.

B. Rulemaking History

DOE has not previously conducted a rulemaking for consumer air cleaners. As stated, DOE tentatively determined in the September 2021 NOPD that: Coverage of consumer air cleaners is necessary or appropriate to carry out the purposes of EPCA; the average U.S. household energy use for consumer air cleaners is likely to exceed 100 kWh per year; and thus, consumer air cleaners qualify as a ''covered product'' under EPCA. 86 FR 51629. In the September 2021 NOPD, DOE sought comment on: (1) A proposed definition for consumer air cleaners; (2) the energy use analysis conducted in support of the September 2021 NOPD; and (3) additional information and data to support DOE's preliminary determination to classify consumer air cleaners as a covered product under EPCA. 86 FR 51629, 51632–51633.

DOE is currently evaluating comments received from interested parties in response to the September 2021 NOPD. DOE will address these comments and publish a final decision on coverage as a separate notice.

C. Rulemaking Process for Test Procedure

As stated, EPCA requires that any test procedure prescribed or amended must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a particular type of covered product during a representative average use cycle and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

DOE will publish a notification in the **Federal Register** (*e.g.,* an RFI or notice of data availability (''NODA'')) whenever DOE is considering initiation of a rulemaking to establish or amend a test procedure. Section 8(a) of the Process Rule.

As part of such document(s), DOE will solicit submission of comments, data, and information on whether DOE should proceed with the rulemaking. Potential topics include whether a test procedure rule would more accurately measure energy efficiency, energy use, or estimated annual operating cost of a product during a representative average use cycle or period of use without being unduly burdensome to conduct; or reduce testing burden. Based on the information received in response to

such request and its own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended test procedure. Section 8(a)(1) and (a)(2) of the Process Rule.

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in DOE's determination whether (and if so, how) to establish a test procedure for consumer air cleaners.

D. Rulemaking Process for Energy Conservation Standards

As stated previously, following a coverage determination, DOE may prescribe an energy conservation standard for any type (or class) of covered products of a type specified in section 6292(a)(20) of EPCA, if the substantive and procedural requirements in 42 U.S.C. 6295(o) and (p) are met and the Secretary determines that: (1) The average per household energy use within the United States by products of such type (or class) exceeded 150 kWh (or its Btu equivalent) for any 12-month period ending before such determination; (2) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kWhs (or its Btu equivalent) for any such 12-month period; (3) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and (4) the application of a labeling rule under section 6294 of this title to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1)) Further, any new or amended standard for covered products of a type specified in paragraph (20) of section 6292(a) of this title shall not apply to products manufactured within 5 years after the publication of a final rule establishing such standard. (42 U.S.C. 6295(1)(2)

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products. As stated, EPCA requires that any new or amended energy conservation standard prescribed by the Secretary be designed to achieve the maximum improvement in energy (or water efficiency for certain products specified by EPCA) that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[5] For example, the United States rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing greenhouse gas (''GHG'') emissions in order to limit the rise in mean global temperature. As such, energy savings that reduce GHG emission have taken on greater importance. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and full-fuel-cycle (''FFC'') effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the affected products;

(2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost, or maintenance expenses;

(3) The total projected amount of energy and water (if applicable) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy and Water Use Determination.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
1. Economic Impact on Manufacturers and Consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis.
2. Lifetime Operating Cost Savings Compared to Increased Cost for the Product.	• Markups for Product Price Determination. • Energy and Water Use Determination. • Life-Cycle Cost and Payback Period Analysis.

[5] See 86 FR 70892, 70901 (Dec. 13, 2021).

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS—Continued

EPCA requirement	Corresponding DOE analysis
3. Total Projected Energy Savings	• Shipments Analysis. • National Impact Analysis.
4. Impact on Utility or Performance	• Screening Analysis. • Engineering Analysis.
5. Impact of Any Lessening of Competition	• Manufacturer Impact Analysis.
6. Need for National Energy and Water Conservation	• Shipments Analysis. • National Impact Analysis.
7. Other Factors the Secretary Considers Relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits. • Regulatory Impact Analysis.

In determining whether to consider establishing or amending any energy conservation standard, DOE's general process is to publish one or more preliminary (*i.e.,* ''pre-NOPR'') documents in the **Federal Register** intended to gather information on key issues. Section 6(a)(1) of the Process Rule. Such document(s) could take several forms depending upon the specific proceeding, including a framework document, RFI, NODA, preliminary analysis, or advance notice of proposed rulemaking. Section 6(a)(2) of the Process Rule. Such document(s) will be published in the **Federal Register**, with any accompanying documents referenced and posted in the appropriate docket. Section 6(a)(1) of the Process Rule.

The pre-NOPR-stage document(s) will solicit submission of comments, data, and information on whether DOE should proceed with the standards rulemaking, including whether any new or amended rule would, as EPCA requires, be economically justified, technologically feasible, and result in a significant savings of energy. Section 6(a)(1) of the Process Rule.

DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard based on the information received in response to such request and its own analysis. Section 6(a)(3) of the Process Rule.

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in the development of the technical analyses on which DOE will ultimately rely to determine whether (and if so, how) to establish energy conservation standards for consumer air cleaners.

E. Deviation From Appendix A

In accordance with Section 3(a) of 10 CFR part 430, subpart C, appendix A, DOE notes that it is deviating from that Appendix's provision that DOE will publish its final coverage determination prior to the initiation of any test procedure or energy conservation standards rulemaking. 10 CFR part 430, subpart C, appendix A, section 5(c). DOE is opting to deviate from this step because DOE believes that providing an opportunity for comment on potential test procedure and energy conservation standards prior to a final coverage determination for consumer air cleaners allows stakeholders an earlier opportunity to provide comment, information, and data that may help inform DOE's priority setting. DOE also notes that in the Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment NOPR published on July 7, 2021, DOE proposed to eliminate the requirement that coverage determination rulemakings must be finalized prior to initiation of a test procedure or energy conservation standard rulemaking. 86 FR 35668, 35672. DOE explained that the coverage determination, test procedure, and energy conservation standard rulemakings are interdependent and a coverage determination defines the product/equipment scope for which DOE can establish test procedure and energy conservation standards. It also signals that inclusion of the consumer product is necessary to carry out the purpose of EPCA, *i.e.,* to conserve energy and/or water. In order to make this determination, DOE needs to consider whether a test procedure and energy conservation standards can be established for the consumer product. If DOE cannot develop a test procedure that measures energy use during a representative average use cycle and is not unduly burdensome to conduct (42 U.S.C. 6293(b)(3)) or prescribe energy conservation standards that result in significant energy savings (42 U.S.C. 6295(o), then making a coverage determination is not necessary as it will not result in the conservation of energy. Thus, it is important that DOE be able to gather information and provide stakeholders an opportunity to comment and provide information and data pertinent to test procedure and energy conservation standard rulemakings, while DOE conducts a coverage determination rulemaking. *Id.*

In accordance with Section 3(a) of 10 CFR part 430, subpart C, appendix A, DOE notes that it is deviating from that Appendix's provision requiring a 75-day comment period for pre-NOPR rulemaking documents for standards. 10 CFR part 430, subpart C, appendix A, section 6(d)(2). DOE is opting to deviate from this step because the 30-day comment period will allow DOE to review comments received in response to this document before finalizing its coverage determination. It would also help inform the Department in prioritizing any potential rulemakings for air cleaners in light of its other on-going rulemakings and statutory requirements. The U.S. Environmental Protection Agency's (''EPA's'') ENERGY STAR® Program (''ENERGY STAR Program'') includes consumer air cleaners. In light of this, DOE expects that stakeholders have established a strong understanding of the key information and issues that would be of interest to DOE as it considers developing test procedure and energy conservation standards for consumer air cleaners. DOE also expects that test data are likely readily available from the ENERGY STAR Program as well as the Association of Home Appliance Manufacturers' (''AHAM's'') Directory of Certified Portable Electric Room Air Cleaners.[6]

[6] See: *www.ahamdir.com/room-air-cleaners/.*

II. Request for Information and Comments Pertaining to Potential Test Procedure

In the following sections, DOE has identified a variety of issues on which it seeks input to assist in its evaluation of a potential test procedure for consumer air cleaners, to ensure that any such test procedure would, as EPCA requires, be reasonably designed to produce test results which reflect energy use during a representative average use cycle without being unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

A. Scope and Definition

Consumer air cleaners are products designed to remove particulate matter and other contaminants from the air to improve indoor air quality. A wide range of consumer air cleaners are available on the market, including tabletop units, units designed for single rooms or multiple rooms, and whole-home units integrated into a central heating and/or cooling system. Consumer air cleaners employ a wide variety of technologies to remove particular matter and other contaminants from the air. They may include secondary functions, typically indoor air quality improvement, that supplement or enhance that primary function, such as providing air circulation, humidification, or dehumidification.

In the September 2021 NOPD, DOE proposed a definition for ''air cleaner'' to help inform its proposed scope of coverage and regulatory definition. 86 FR 51629, 51632. DOE consulted existing definitions and classifications of consumer air cleaners developed by AHAM—the industry trade group for consumer air cleaners—and the ENERGY STAR Program, and additional market research conducted by DOE. *Id.* at 86 FR 51631.

AHAM defined ''air cleaner'' in an industry standard, it published and which is certified by American National Standards Institute (''ANSI''), to measure the performance of portable household electric room air cleaners, titled ANSI/AHAM AC–1–2020 *Portable Household Electric Room Air Cleaners* (''ANSI/AHAM AC–1–2020'').[7] Section 3.1 of ANSI/AHAM AC–1–2020 defines ''Portable Household Electric Room Air Cleaner'' as ''[a]n electric appliance with the function of removing particulate matter from the air and which can be moved from room to room.''

The ENERGY STAR Program also establishes a definition for room air cleaners (also referred to as air purifiers), in addition to qualification criteria for an air cleaner to earn the ENERGY STAR label.[8] The current ENERGY STAR V2.0 Product Specification [9] defines ''room air cleaner'' as ''an electric appliance with the function of removing particulate matter from the air and which can be moved from room to room,'' consistent with ANSI/AHAM AC–1–2020.

As discussed in the September 2021 NOPD, the definitions in ANSI/AHAM AC–1–2020 and the ENERGY STAR V2.0 Product Specification include specific air cleaning and air purifying designs and technologies, but are limited to ''portable'' air cleaners that ''can be moved from room to room.'' DOE noted in the September 2021 NOPD that while ANSI/AHAM AC–1–2020 specifies that the standard is applicable only to portable air cleaners, it includes definitions and setup instructions for air cleaners that include wall mounting brackets or instructions to mount the air cleaner integrally to the wall. 86 FR 51629, 51632. To cover a more comprehensive range of the consumer market for air cleaning and purification, an expanded definition of a consumer air cleaner may be appropriate. DOE therefore considered a modified definition that would include other consumer air cleaners, such as those that are mounted on walls and ceilings, or that are designed for whole-home air cleaning in conjunction with central heating or air conditioning systems. 86 FR 51629, 51632. The proposed definition expands the range of products to include those that use technologies that clean the air by destroying or deactivating contaminants, including microbes as well as particulates, from the air (instead of only removing them). *Id.* at 86 FR 51632.

DOE proposed in the September 2021 NOPD to define a consumer air cleaner as a consumer product that:

(1) Is a self-contained, mechanically encased assembly;

(2) Is powered by single-phase electric current;

(3) Removes, destroys, or deactivates particulates and microorganisms from the air; and

(4) Excludes products that destroy or deactivate particulates and microorganisms solely by means of ultraviolet (''UV'') light without a fan for air circulation; and

(5) Excludes central air conditioners, room air conditioners, portable air conditioners, dehumidifiers, and furnaces as defined in 10 CFR 430.2. . 86 FR 51629, 51632.

As discussed in the September 2021 NOPD, DOE proposed to exclude from coverage those consumer products that purify air solely by means of UV light without circulating air through the product using a fan because the energy-consuming component of such products would be a fluorescent lamp or light-emitting diode designed to emit light in the UV portion of the electromagnetic spectrum. 86 FR 51629, 51632. Accordingly, DOE would classify these products under EPCA as a type of lamp (see the definition of ''lamps primarily designed to produce radiation in the ultraviolet region of the spectrum'' and ''light-emitting diode or LED'' in 10 CFR 430.2), and therefore, did not consider applying any future consumer air cleaner requirements to these products. *Id.*

DOE continues to evaluate comments received from interested parties in response to the proposed definition for consumer air cleaners in the September 2021 NOPD.

B. Test Procedure for Consumer Air Cleaners

DOE has examined existing test methods to measure key performance characteristics for determining the energy efficiency of consumer air cleaners. These performance characteristics include clean air delivery rate (''CADR''), operating (*i.e.,* active) mode power consumption, and standby mode power consumption. DOE is seeking comment on whether the test methods identified below, could be used as the basis for a DOE test procedure for consumer air cleaners. In particular, DOE is seeking comment on any modifications to these test methods that would be needed to test the full range of products under DOE's proposed definition of consumer air cleaner.

1. Current Industry Test Procedure

As discussed, AHAM published ANSI/AHAM AC–1–2020 for measuring the performance of portable household electric room air cleaners.

Section 3.14 of ANSI/AHAM AC–1–2020 defines CADR as the metric to measure an air cleaner's efficacy in removing particulate matter from the air. CADR represents the rate of particulate reduction in the test

[7] ANSI/AHAM AC–1–2020 available at AHAM website at *www.aham.org/itemdetail?iproductcode=30002&category=padstd.*

[8] See ENERGY STAR website for air purifiers (cleaners) at *www.energystar.gov/products/air_purifiers_cleaners.*

[9] See Eligibility Criteria Version 2.0, Rev. April 2021, available at *www.energystar.gov/sites/default/files/ENERGY%20STAR%20Version%202.0%20Room%20Air%20Cleaners%20Specification_Rev%20April%202021_with%20Partner%20Commitments.pdf.*

chamber when the air cleaner is turned on, minus the rate of ''natural decay'' [10] when the air cleaner is not running, multiplied by the volume of the test chamber (specified as 1,008 cubic feet). As such, testing an air cleaner requires conducting two separate tests: A first test with the air cleaner turned off, and a second test with the air cleaner turned on. The CADR value is expressed in units of cubic feet per minute (''cfm'').[11]

Sections 5, 6, and 7 of ANSI/AHAM AC–1–2020 specify procedures for measuring air cleaner efficacy using three different types of particulates representing three ranges of particulate matter size: Pollen (5 micrometer (''μm'') to 11 μm diameter), dust (0.5 μm to 3.0 μm diameter), and cigarette smoke (0.10 μm to 1.0 μm diameter), respectively.

Section 2 of ANSI/AHAM AC–1–2020 indicates that the precision of the test method is as follows: ± 25 cfm for pollen CADR; ± 10 cfm for dust CADR; and ± 10 cfm for cigarette smoke CADR. Given these levels of precision, ANSI/AHAM AC–1–2020 is limited to measuring air cleaners within rated CADR ranges of 10 to 600 cfm for dust and cigarette smoke and 25 to 450 cfm for pollen.

Section 9 of ANSI/AHAM AC–1–2020 also includes methods to measure the air cleaner's operating power and standby power usage in Watts (''W''), as discussed further in sections II.B.1.a and II.B.1.b of this document.

All CADR and power testing are performed in a test chamber with a controlled environment. Section 4 of ANSI/AHAM AC–1–2020 specifies requirements for electrical power supply, test chamber ambient temperature, test chamber air exchange rate, test chamber particulate concentrations, and use of a recirculation fan in the test chamber.

a. Operating (Active) Mode Testing

ANSI/AHAM AC–1–2020 specifies methodologies to obtain consistent levels of particulate concentration in the test chamber for each of the three particulate types. An aerosol generator disseminates the appropriate particulate for each test. The method also discusses using other devices, such as a cigarette smoke diluter and aerosol spectrometer to maintain consistent test particulate levels during the test and to measure the particle size distribution within the room air, respectively. For each particulate, two tests are performed, one with the air cleaner not operating and one with it operating. First, to measure the natural decay of the particulate under evaluation, the air cleaner is not operated and the particulates are distributed within the room at a specified concentration. Particulate concentration is measured and averaged over a period of time prescribed for each particulate type. In the second test, the air cleaner is operated at the setting that results in the maximum particulate removal rate and the particulate matter removal is measured using the same process as in the first test. Particulate concentration is again measured over a prescribed period of time, and the rate of particulate reduction is calculated. The difference of the rate of particulate reduction with the air cleaner operating minus the rate of natural decay with the air cleaner not operating, multiplied by the volume of the test chamber, provides the CADR value for that particulate type.

Section 9 of ANSI/AHAM AC–1–2020 specifies methods for measuring operating power. The section allows measuring operating power during the CADR test for either cigarette smoke or dust, the duration of each being greater than 15 minutes, which is enough time to measure operating power. After the air cleaner motor has been conditioned as specified in Section 9.2 of ANSI/AHAM AC–1–2020, the power measuring instrument is connected between the power supply and air cleaner, and all settings/options are set at the maximum level. The air cleaner is operated for 2 minutes without any power measurements, and then power consumption is recorded at 1-minute intervals for 13 minutes (for a total test time of 15 minutes). Up to three of the 13 data points may be discarded as anomalous to account for line surges and other variables. The remaining power measurements are averaged to obtain the operating power, in W, of the air cleaner.

DOE requests comments on whether ANSI/AHAM AC–1–2020 provides an appropriate method to use as the basis for a Federal test method and for defining energy conservation standard levels for consumer air cleaners.

DOE requests comment on the use of the CADR, as opposed to another metric such as rate of decay, to characterize consumer air cleaner performance. In particular, DOE requests comment on whether consumers could find the unit of measurement of cfm for CADR confusing and misunderstand it as referring to the rate of air movement through the device.

DOE requests comment on whether the power measurement could vary based on the particulate test that is used to measure operating power. If power measurement varies based on the particulate test, DOE requests comment on which particulate test (pollen, dust, or cigarette smoke) should be used as the basis for the power measurement in any Federal test procedure that DOE may develop. Alternately, DOE requests comment on whether it should consider requiring power measurements for each particulate test and use a simple or weighted average to determine operating power.

DOE requests comment on whether it should consider testing consumer air cleaners at any other power level in addition to the maximum power level required by ANSI/AHAM AC–1–2020.

DOE requests comment on whether ANSI/AHAM AC–1–2020 could also be used to test other types of consumer air cleaners, such as ceiling- mounted products.

b. Standby Mode Testing

Section 10 of ANSI/AHAM AC–1–2020 specifies a measurement procedure for standby mode that is performed as a separate test from the CADR and operating power tests. The standby power test specifies allowable ranges for three environmental conditions: Air speed in the room, ambient air temperature, and voltage supply. As specified, the standby power test method may only be used when the selected mode and measured power consumption are stable (defined as a variation of less than 5 percent in measured power consumption over 5 minutes). When stability is not achieved, power consumption can be determined by alternative methods: By averaging the power readings over a specified period of time or by recording the energy consumption over a specified period and dividing by the total time period.

To perform the standby mode test, the air cleaner is connected to the metering equipment. After the air cleaner has been allowed to stabilize for at least 5 minutes, the power consumption is monitored for not less than an additional 5 minutes. If the power consumption does not drift by more than 5 percent (from the maximum value observed) during the latter 5 minutes, the load is considered stable

[10] AHAM defines ''natural decay'' as the reduction of particulate matter due to natural phenomena in the test chamber: Principally agglomeration [a process in which fine particles ''clump'' together], surface deposition [a process in which particles attach to a surface] (including sedimentation [a process in which particles settle out of suspension in the air onto a surface due to gravity]), and air exchange.

[11] Although the unit of measurement for CADR is cfm, ANSI/AHAM AC–1–2020 explains that CADR values indicate the performance of an air cleaner as a complete system and that the metric has no linear relationship to air movement or to the characteristics of any particular particle removal methodology *per se.*

and the power consumption can be recorded directly from the instrument at the end of the latter 5 minute period. The resulting standby power is reported in W, rounded to the nearest hundredths.

The standby mode test method specified in ANSI/AHAM AC–1–2020 is different from that specified in the most current version of IEC Standard 62301, Edition 2.0, ''Household electrical appliances—Measurement of standby power'' (''IEC 62301 Ed. 2.0''), which is the standard that EPCA directs DOE to consider when including measurements of standby mode and off mode energy use in its test procedures for covered products, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) IEC 62301 Ed. 2.0 provides three methods to measure standby power, depending on the characteristics of the power consumption in standby mode (*e.g.,* stable, unstable, cyclic, of a limited duration, *etc.*) The three methods are: the sampling method, the average reading method, and the direct meter reading method. The sampling method, which is the method incorporated by reference most frequently in DOE test procedures for other covered products, specifies that the unit under test must be operated in standby mode for at least 15 minutes and standby power is recorded at least once every second. To determine standby power, the data from the second two-thirds of the total test duration is used to determine stability. If the measured power is less than or equal to 1 W, stability is established when a linear regression through all power readings for the second two-thirds of the total period has a slope of less than 10 milliwatts per hour (''mW/h''). If the measured power is greater than 1 W, stability is established when a linear regression through all power readings for the second two-thirds of the total period has a slope that is less than 1 percent of the measured input power per hour.

DOE requests comment on the suitability of the standby power measurement procedure specified in ANSI/AHAM AC–1–2020, IEC 62301 Ed. 2.0, or any other test method for measuring standby mode and off mode energy use of consumer air cleaners, in light of EPCA's requirement in 42 U.S.C. 6295(gg)(2)(A)) for DOE to consider the most current version of IEC Standard 62301.

2. Other Test Procedures

In addition to ANSI/AHAM AC–1–2020, DOE is aware of a few other test methods for air cleaners. DOE has identified two test methods to measure how effectively a unit removes microorganisms from the air (as opposed to particles such as smoke, pollen, and dust). DOE has additionally identified two other test methods that measure the effectiveness of removing particulates from the air, similar to the ANSI/AHAM AC–1–2020 testing standard.

The first of these test methods was developed by the Center for Engineering and Environmental Technology at Research Triangle Institute (''RTI''), titled ''Methodology to Perform Clean Air Delivery Rate Type Determinations with Microbiological Aerosols'' [12] (''RTI Test Method''). The stated objective of the RTI Test Method is to determine a CADR-type measurement for an air cleaner using microbiological aerosols. The method is described as a modification of the ANSI/AHAM AC–1 test method that can be used for evaluating a wide range of air cleaning devices. Similar to the ANSI/AHAM AC–1–2020 test method, the RTI Test Method requires measuring the natural decay rate without the air cleaner operating and the particulate removal rate while the air cleaner is operating in a test chamber. The RTI Test Method has been conducted using mold, bacteria, and viruses, representing the primary groups of microorganisms that a household air cleaner would be expected to remove in a home.

The second of these test methods was developed by researchers at Korea Testing Laboratory (''KTL''), Dongguk University, and Biot Korea Inc., titled ''Assessment of air purifier on efficient removal of airborne bacteria, Staphylococcus epidermidis, using single-chamber method'' [13] (''KTL Test Method''). The objective of the KTL Test Method is to measure an air cleaner's efficacy of removing airborne bacteria from indoor air. Similar to ANSI/AHAM AC–1–2020 and the RTI Test Method, the KTL Test Method involves measuring both a natural decay rate (*i.e.,* without the air cleaner operating) and a particulate decay rate while the air cleaner is operating in a test chamber. The output of the KTL Test Method, unlike ANSI/AHAM AC–1–2020 and the RTI Test Method, which output a CADR value (with units of cfm), is a unitless value representing the ratio of the natural decay rate to the particulate decay rate.

The third of these test methods is the ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') standard 52.2–2017, titled ''Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size'' [14] (''ASHRAE 52.2–2017''). ASHRAE 52.2–2017 specifies a test method to evaluate air cleaner performance as a function of particle size using an aerosol generator to introduce standardized amounts of dust at periodic intervals to simulate accumulation of particles over the lifetime of the air cleaner. The standard measures air cleaner performance based on the removal efficiency of particles with 12 defined particle size ranges between 0.3 and 10 μm in diameter. Efficiency measurements for each of the 12 particle size ranges are taken at various dust loads by challenging the filter with potassium chloride particles. This test aerosol provides particles over the entire range of 0.3 to 10 μm required by the test procedure. The output metric is the minimum efficiency reporting value (''MERV''), that quantifies the effectiveness of the air cleaner's filtration on a 16-point scale.

The fourth testing method is from the National Research Council Canada (''NRCC''). The NRCC's publication is titled, ''Method for Testing Portable Air Cleaner's'' [15] (''NRCC Test Method''). The NRCC Test Method determines the air cleaner's performance by measuring particle, volatile organic compounds (''VOCs'') (including formaldehyde, toluene, and d-limonene), and ozone removal. Known quantities of particles of different sizes, ozone, and the selected VOCs are introduced in different tests until a certain established target concentration is achieved. The NRCC Test Method provides multiple suggested procedures for injecting particles and VOCs into the test chamber. Once target contaminant levels in the test chamber have been achieved, the injection of particles or VOCs is stopped, and the concentration decay rate is measured while the air cleaner is operating. Particle concentration is recommended to be measured using either a condensation particle counter, optical particle counter, or an aerodynamic particle sizer. Formaldehyde concentration is determined using a high-performance liquid chromatograph technique and toluene and d-limonene concentrations are measured using a gas chromatograph—mass spectrometer technique. Ozone levels in the chamber air are determined using an analyzer

[12] RTI Test Method available at: *doi.org/10.1080/713834074.*

[13] KTL Test Method available at: *link.springer.com/article/10.1007/s10661-019-7876-3.*

[14] ASHRAE 52.2–2017 available at: *ashrae.org/File%20Library/Technical%20Resources/COVID-19/52_2_2017_COVID-19_20200401.pdf.*

[15] NRCC Test Method available at: *nrc-publications.canada.ca/eng/view/ft/?id=cc1570e0-53cc-476d-b2ee-3e252d8bd739.*

based on either chemiluminescence or UV absorption. These results are then compared to test results without the air cleaner operating to assess the removal effectiveness of the unit.

Additionally, in response to the September 2021 NOPD, AHAM commented that it was working on an updated standard to measure the energy efficiency for room air cleaners, AHAM AC–7–2021, ''Energy Test Method for Portable Air Cleaners''. (Docket No. EERE–2021–BT–DET–0022, AHAM, No. 13 at p. 1) AHAM has not yet issued this test method.

DOE requests comment on whether it should consider any methodology for measuring the removal efficacy of microorganisms (*i.e.,* viruses, bacteria, mold, *etc.*) from indoor air as part of a Federal test procedure for consumer air cleaners.

DOE requests comment on the suitability of each of the RTI Test Method and the KTL Test Method for measuring a consumer air cleaner's removal efficacy of microorganisms from indoor air.

DOE requests comment on the additional test methods identified in this section that measure the performance of consumer air cleaners using various particulates. In particular, DOE requests comment on the scope, methodology, and types of particulates, pollutants, and/or microorganisms that are included in each test method.

DOE requests comments on whether any other test methods have been developed for consumer air cleaners that would be relevant to DOE's consideration of a Federal test procedure to measure the energy efficiency of consumer air cleaners. In particular, DOE seeks comment on test methods that could be used to test ''non-portable'' consumer air cleaners, such as those that are permanently mounted (*e.g.,* ceiling-mounted air cleaners) or that provide whole-home air cleaning in conjunction with central heating or air conditioning systems; and test methods that could be used to measure the performance of consumer air cleaners that destroy or deactivate contaminants from the air instead of removing them.

C. Metric for Consumer Air Cleaners

As discussed, EPCA requires that any test procedure prescribed or amended must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a given type of covered product during a representative average use cycle and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, EPCA requires DOE to amend its test procedure for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, taking into consideration the most current versions of IEC Standards 62301 and 62087. There are only two exceptions: If the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*)

The ENERGY STAR V2.0 Product Specification [16] for Room Air Cleaners defines separate ''on mode'' (*i.e.,* active mode) and ''partial on mode'' (*i.e.,* standby/off mode) metrics to certify air cleaners under the ENERGY STAR label. The on mode criterion is defined in terms of a minimum ''CADR/W'' metric. That metric, in turn, is defined as the rated smoke CADR measurement divided by the operating power consumption measured during the smoke particle removal test, each of which is determined in accordance with ANSI/AHAM AC–1–2020. The partial on mode criterion is defined in terms of a maximum wattage level, as determined in accordance with IEC Standard 62301.

In accordance with the requirements of EPCA, DOE would evaluate whether an integrated test procedure (*i.e.,* a test procedure that integrates measures of standby mode and off mode energy consumption into the overall energy efficiency descriptor) is technically feasible. For example, DOE could define an integrated CADR/W metric in which the denominator represents a weighted average of the power consumption associated with active mode, standby mode, and off mode, weighted by the amount of time spent in each mode. DOE notes that the ENERGY STAR program assumes 16 active mode hours per day and 8 inactive mode (*i.e.,* standby or off mode) hours per day to calculate annual energy consumption of qualifying consumer air cleaners.[17]

DOE requests comment on the technical feasibility of integrating measures of standby mode and off mode energy consumption into the overall energy efficiency descriptor (*i.e.,* creating an integrated metric) for consumer air cleaners. In particular, DOE requests comment on its example approach of defining an integrated CADR/W metric, in which the denominator would represent a weighted average of the power consumption associated with active mode, standby mode, and off mode, weighted by the amount of time spent in each mode.

DOE requests comment on consumer usage of consumer air cleaners, in particular, the amount of time spent in active mode, standby mode, and off mode.

As discussed previously, ANSI/AHAM AC–1–2020 specifies procedures for measuring CADR ratings for three types of particulate matter: Pollen, dust, and cigarette smoke. Prior to Version 2.0 of the Product Specification for Room Air Cleaners, the ENERGY STAR eligibility criteria were based on the CADR/W metric using the dust particle removal test. That changed in a draft version of the V2.0 Product Specification,[18] where EPA described its understanding that smoke pollutants can have the greatest health risk for the general population and that the AHAM Verification Program for room air cleaners calculates the appropriate room size for a given room air cleaner based on the cigarette smoke CADR measurement. (See Note box in Section 3.3.1 of the draft.) EPA also stated that retailers appear to use this calculation to direct consumers to a specific room air cleaner. *Id.* EPA noted that cigarette smoke has the smallest particle size of the three pollutants tested to the ANSI/AHAM AC–1–2015 standard and is typically the most energy intensive to remove. *Id.* For these reasons, and in consideration of stakeholder feedback, EPA asserted that cigarette smoke is the appropriate pollutant to use as the basis for evaluating the energy efficiency of room air cleaners. *Id.*

DOE requests comment on whether cigarette smoke would be the appropriate particulate for determining a CADR rating of air cleaners under a DOE test procedure, should DOE adopt a measurement of CADR in a test procedure for consumer air cleaners. If cigarette smoke is not the most appropriate particulate, DOE requests comment on other particulate(s) that

[16] See Eligibility Criteria Version 2.0, Rev. April 2021, available at *www.energystar.gov/sites/default/files/ENERGY%20STAR%20Version%202.0%20Room%20Air%20Cleaners%20Specification_Rev%20April%202021_with%20Partner%20Commitments.pdf.*

[17] The ENERGY STAR online product database provides a description of the Annual Energy Use calculation at *data.energystar.gov/dataset/ENERGY-STAR-Certified-Room-Air-Cleaners/jmck-i55n/data.*

[18] See Draft 1 Version 2.0 specification at *www.energystar.gov/products/spec/room_air_cleaners_version_2_0_pd.*

would be more appropriate as the basis for measurement, including data and information to support such a recommendation.

As discussed previously, ANSI/AHAM AC–1–2020 specifies that it can be used to test ''portable'' air cleaners that ''can be moved from room to room.'' [19] These include floor type, table type, and wall type units. Ceiling type units are explicitly outside the scope of that test method. ANSI/AHAM AC–1–2020 also does not apply to ''non-portable'' consumer air cleaners, such as those that are designed for whole-home air cleaning in conjunction with central heating or air conditioning systems. DOE is not aware of test procedures for these types of units and seeks guidance on whether the CADR/W efficiency metric would be appropriate for characterizing the energy efficiency of these types of units. DOE also seeks guidance about consumer air cleaners that clean the air by destroying or deactivating particulates and microorganisms from the air instead of removing them (for example, a consumer air cleaner designed to purify air using UV light or other heat in combination with a fan to circulate air through the product). In particular, DOE seeks input on whether the CADR/W metric would be appropriate for such products.

DOE requests comment on whether the CADR/W efficiency metric would be appropriate for characterizing the energy efficiency of consumer air cleaner units permanently mounted to a structure.

DOE requests comment on whether the CADR/W metric would be appropriate for consumer air cleaners that clean the air by destroying or deactivating particulates and microorganisms from the air instead of removing them.

DOE requests comment on whether any other metrics not already discussed in this RFI would provide a better measure of energy efficiency or energy use of consumer air cleaners during a representative average use cycle or period of use.

III. Request for Information and Comments Pertaining to Potential Energy Conservation Standards

DOE is also publishing this RFI to collect data and information to inform its decision, consistent with its obligations under EPCA, as to whether the Department should proceed with an energy conservation standards rulemaking. In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether standards for consumer air cleaners may be warranted.

As stated previously, following a coverage determination, EPCA outlines four criteria for prescribing an energy conservation standard for a newly covered product. The four criteria are that: (1) The average per household domestic energy use by such products exceeded 150 kWh (or its Btu equivalent) for any 12-month period ending before such determination; (2) the aggregate domestic household energy use by such product exceeded 4.2 million kWh (or its Btu equivalent) for any such 12-month period; (3) substantial improvement in the energy efficiency of the products is technologically feasible; and (4) applying a labeling rule is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, products of such type which achieve the maximum energy efficiency which is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1))

DOE seeks data and information on whether the four criteria for prescribing an energy conservation standard for air cleaners are met.

DOE seeks comment on whether energy conservation standards for consumer air cleaners would be economically justified, technologically feasible, and would result in a significant savings of energy.

A. Market and Technology Assessment

The market and technology assessment that DOE routinely conducts when analyzing the impacts of a potential new or amended energy conservation standard provides information about the consumer air cleaner industry that will be used in DOE's analysis throughout the rulemaking process. DOE uses qualitative and quantitative information to characterize the structure of the industry and market. DOE identifies manufacturers, estimates market shares and trends, addresses regulatory and non-regulatory initiatives intended to improve energy efficiency or reduce energy consumption, and explores the potential for efficiency improvements in the design and manufacturing of consumer air cleaners. DOE also reviews product literature, industry publications, and company websites. Additionally, DOE considers conducting interviews with manufacturers to improve its assessment of the market and available technologies.

For consumer air cleaners, DOE is interested in understanding the consumer air cleaner market, the impact of the current COVID–19 pandemic on this market, and whether the current industry trends are a result of the pandemic or expected to stay long-term.

DOE seeks feedback on how the COVID–19 pandemic has impacted the consumer air cleaner market. DOE requests any available market data or information on recent consumer behavior trends for consumer air cleaners in response to the pandemic.

1. Product Classes

When evaluating and establishing energy conservation standards, DOE may divide covered products into product classes by the type of energy used, or by capacity or other performance-related features that justify a different standard. (42 U.S.C. 6295(q)) In making a determination whether capacity or another performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. (*Id.*) For consumer air cleaners, DOE may use CADR as a measurement of capacity.

DOE requests comment on whether capacity or any other performance-related features, such as air cleaning technology (*i.e.,* whether the product destroys or deactivates contaminants from the air or removes them), of consumer air cleaners would justify the establishment of different product classes (*i.e.,* would justify different standards for such classes).

2. Technology Assessment

In analyzing the feasibility of potential new energy conservation standards, DOE uses information about technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given energy conservation standard level under consideration. In consultation with interested parties, DOE intends to develop a list of technologies to consider in its analysis.

DOE seeks information on technologies that are used to improve the energy efficiency of consumer air cleaners. Specifically, DOE seeks information on the range of efficiencies or performance characteristics that are currently available for each technology option.

For each technology option suggested by stakeholders, DOE seeks information regarding its market adoption, costs, and

[19] DOE notes the vague nature of ''can be,'' which depends greatly on the abilities of the person or people involved in attempting to move the item.

any concerns with incorporating the technology into products (*e.g.,* impacts on consumer utility, potential safety concerns, manufacturing or production challenges, *etc.*).

B. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies that improve energy efficiency to determine which technologies will be eliminated from further consideration and which will be passed to the engineering analysis for further consideration.

DOE determines whether to eliminate certain technology options from further consideration based on the following criteria:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If a technology is determined to have significant adverse impact on the utility of the product to significant subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

Sections 6(b)(3) and 7(b) of the Process Rule.

Technology options identified in the technology assessment are evaluated against these criteria using DOE analyses and inputs from interested parties (*e.g.,* manufacturers, trade organizations, and energy efficiency advocates). Technologies that pass through the screening analysis are referred to as ''design options'' in the engineering analysis. Technology options that fail to meet one or more of the five criteria are eliminated from consideration.

DOE requests feedback on whether any air cleaner technology options would be screened out based on the five screening criteria described in this section. DOE also requests information on the technologies that would be screened out and the screening criteria that would be applicable to each screened out technology option.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of consumer air cleaners. There are two elements to consider in the engineering analysis: The selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the life-cycle cost (''LCC'') analysis, payback period (''PBP'') analysis, and the national impacts analysis (''NIA'')).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) Relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to interpolate to define ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

For each product class DOE analyzes, DOE selects a baseline model as a reference point against which any changes resulting from new or amended energy conservation standards can be measured. The baseline model in each product class represents the characteristics of common or typical products in that class.

DOE requests feedback on appropriate baseline efficiency levels for DOE to apply, and the product classes to which these baseline efficiency levels would be applicable, in evaluating whether to establish energy conservation standards for consumer air cleaners.

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE defines a ''max-tech'' efficiency level to represent the theoretical maximum possible efficiency if all available design options are incorporated in a model. In applying these design options, DOE would only include those options that are compatible with each other and that when combined would represent the theoretical maximum possible efficiency. Often, the max-tech efficiency level is not commercially available because it is not economically feasible.

DOE seeks input on identifying the max-tech efficiency level for consumer air cleaners. Additionally, for any max-tech efficiency level identified by stakeholders, DOE also seeks input on whether such a max-tech efficiency level would be appropriate and technologically feasible for potential consideration as possible energy conservation standards for consumer air cleaners, and if not, why not.

DOE seeks feedback on what design options would be incorporated at a max-tech efficiency level, and the efficiencies associated with those levels. As part of this request, DOE also seeks information as to whether there are limitations on the use of certain combinations of design options.

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including availability and reliability of public information, characteristics of the regulated product, and the availability and timeliness of purchasing the product on the market.

The cost approaches are summarized as follows:

- *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.
- *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.
- *Price surveys:* If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

The resulting bill of materials provides the basis for the manufacturer production cost (''MPC'') estimates. DOE then applies a manufacturer markup to convert the MPC to manufacturer selling price (''MSP''). The manufacturer markup accounts for costs such as overhead and profit.

As described at the beginning of this section, the main outputs of the engineering analysis are cost-efficiency relationships that describe the estimated increases in manufacturer production cost associated with higher-efficiency products for the analyzed product classes.

DOE requests feedback on design options that manufacturers would use to increase energy efficiency in consumer air cleaners above the baseline. This includes information on the order in which manufacturers would incorporate the different technologies to incrementally improve efficiency of products. DOE also requests feedback on whether the increased energy efficiency would lead to other design changes that would not occur otherwise. DOE is also interested in information regarding any potential impact of design options on a manufacturer's ability to incorporate additional functions or attributes in response to consumer demand.

DOE also seeks input on the increase in MPC associated with incorporating each particular design option. DOE also requests information on the investments necessary to incorporate specific design options, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing/production impacts.

DOE requests comment on whether certain design options may not be applicable to (or incompatible with) certain types of air cleaners.

D. Distribution Channels and Markups Analysis

DOE derives customer prices based on manufacturer markups as discussed, as well as retailer markups, distributor markups, contractor markups (where appropriate), and sales taxes. In deriving the retailer and distributor markups, DOE determines the major distribution channels for product sales, the markup associated with each party in each distribution channel, and the existence and magnitude of differences between markups for baseline products (''baseline markups'') and higher-efficiency products (''incremental markups''). The identified distribution channels (*i.e.,* how the products are distributed from the manufacturer to the consumer), and estimated relative sales volumes through each channel are used in generating end-user price inputs for the LCC analysis and NIA.

DOE requests data and information on typical manufacturer markups for consumer air cleaners (*i.e.,* the markup applied to the MPC to determine MSP).

DOE requests information on the existence of any distribution channels other than the retail outlet distribution channel that are used to distribute consumer air cleaners into the market.

E. Energy Use Analysis

As part of the rulemaking process, DOE conducts an energy use analysis to identify how consumers use products, and thereby determine the energy savings potential of energy efficiency improvements. The energy use analysis is meant to represent typical energy consumption in the field. DOE will base the energy consumption of consumer air cleaners on the annual energy consumption as determined by the DOE test procedure.

1. Consumer Samples and Market Breakdowns

To estimate the energy use of products in field operating conditions, DOE typically develops consumer samples that are representative of installation and operating characteristics of how such products are used in the field, as well as distributions of annual energy use by application and market segment. In a potential energy conservation standards rulemaking for consumer air cleaners, DOE may utilize the most current version of the Residential Energy Consumption Survey (''RECS'') published by the U.S. Energy Information Administration (''EIA'') (currently the 2015 RECS) and the most current version of the Commercial Building Energy Consumption Survey (''CBECS) also published by EIA (currently the 2012 CBECS).

DOE requests data and information regarding market applications of consumer air cleaners and how those are broken down by economic sector (*e.g.,* residential versus commercial).

2. Operating Hours

One of the key inputs to the energy use analysis is the number of annual operating hours of the product.

As discussed, the ENERGY STAR database [20] assumes that a consumer air cleaner operates for 16 hours per day and is inactive for 8 hours per day, corresponding to 5,840 active mode hours per year and 2,920 inactive mode hours annually.

DOE requests data or published reports on the number of annual operating hours of consumer air cleaners. In particular, DOE requests data or published reports on whether the annual operating hours may differ for any of the types of consumer air cleaners that would be within the scope of DOE's proposed definition of consumer air cleaner.

F. Life-Cycle Cost and Payback Period Analyses

DOE conducts the LCC and the payback period (''PBP'') analyses to evaluate the economic effects of potential energy conservation standards for consumer air cleaners on individual customers. The effects of more stringent energy conservation standards on a consumer of consumer air cleaners include changes in operating expenses (usually decreased) and changes in purchase prices (usually increased). For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimated baseline level. The LCC is the total customer expense over the life of the product, consisting of purchase, installation, and operating costs (expenses for energy use, maintenance, and repair). Inputs to the calculation of total installed cost include the cost of the product—which includes the MSP, distribution channel markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product

[20] See ENERGY STAR database for air cleaners at *https://data.energystar.gov/dataset/ENERGY-STAR-Certified-Room-Air-Cleaners/jmck-i55n.*

lifetimes, discount rates, and the year that compliance with new and amended standards is required.

DOE measures savings of potential standards relative to a ''no-new-standards'' case that reflects conditions without new and/or amended standards, and uses efficiency market shares to characterize the ''no-new-standards'' case product mix. By accounting for consumers who already purchase more efficient products, DOE avoids overstating the potential benefits from potential standards.

DOE requests information on the current energy efficiency distribution of consumer air cleaners.

DOE requests data and information on the installation costs of consumer air cleaners, and whether those vary by product class or any other factor affecting their efficiency.

G. Repair and Maintenance Costs

As noted, inputs to the calculation of operating expenses include repair and maintenance costs, among other factors.

DOE requests feedback and data on whether maintenance costs differ in comparison to the baseline maintenance costs for any air cleaner technology options.

DOE requests information and data on the frequency of repair, and repair and maintenance costs of consumer air cleaners. DOE is also interested in the market share of consumers who simply replace the products when they fail as opposed to repairing them, and factors that affect whether consumers decide to repair or replace, such as income, geographical location, or product replacement cost and repair costs.

H. Shipments

DOE develops shipments forecasts of products to calculate the national impacts of potential new or amended energy conservation standards on energy consumption, net present value (''NPV''), and future manufacturer cash flows. DOE shipments projections are typically based on available historical data categorized by product class, capacity, and energy efficiency. Current sales estimates allow for a more accurate model that captures recent trends in the market.

DOE requests annual sales data (*i.e.,* number of shipments) of consumer air cleaners from 2016 to 2020 disaggregated to the extent possible by product class, capacity, energy efficiency level, or any other differentiating factor used in the industry. For each class/category, DOE also requests the fraction of sales that are ENERGY STAR-qualified.

To project future shipments for the residential and commercial sectors, DOE typically uses, respectively, new housing starts projections and floorspace projections from the Annual Energy Outlook (AEO) as market drivers.

DOE requests on the market drivers and saturation trends that would help project shipments for consumer air cleaners.

I. National Impact Analysis

The purpose of the NIA is to estimate the aggregate economic impacts of potential efficiency standards at the national level. The NIA assesses the national energy savings (''NES'') and the national NPV of total customer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.

A key component of DOE's estimates of NES and NPV is the equipment energy efficiencies forecasted over time for the no-new-standards case and for standards cases. DOE generally analyzes trends in market efficiency to project the no-new standards case efficiency over the NIA analysis period.

DOE seeks information on the expected efficiency trends in the consumer air cleaner market.

J. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis (''MIA'') is to estimate the financial impact of any new energy conservation standards on manufacturers of consumer air cleaners, and to evaluate the potential impact of such standards on direct employment and manufacturing capacity. The MIA includes both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (''GRIM''), an industry cash-flow model adapted for each product in this analysis, with the key output of industry net present value (''INPV''). The qualitative part of the MIA addresses the potential impacts of energy conservation standards on manufacturing capacity and industry competition, as well as factors such as product characteristics, impacts on particular subgroups of firms, and important market and product trends.

As part of the MIA, DOE intends to analyze impacts of energy conservation standards on subgroups of manufacturers of covered products, including small business manufacturers. DOE uses the Small Business Administration's (''SBA'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the applicable North American Industry Classification System (''NAICS'') code.[21] Manufacturing of portable consumer air cleaners is classified under NAICS 335210, ''Small Electrical Appliance Manufacturing, whereas manufacturing of non-portable consumer air cleaners is classified under NAICS 333413, ''Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing.'' The SBA sets a threshold of 1,500 employees or less and 500 or less, respectively, for a domestic entity to be considered as a small business in these industry categories. These employee thresholds include all employees in a business' parent company and any other subsidiaries.

One aspect of assessing manufacturer burden involves examining the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other federal agencies that affect the manufacturers of a covered product. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

To the extent feasible, DOE seeks the names and contact information of any domestic or foreign-based manufacturers that distribute consumer air cleaners in the United States.

In particular, DOE requests the names and contact information of small businesses, as defined by the SBA's size threshold, that manufacture consumer air cleaners in the United States. In addition, DOE requests comment on any other manufacturer subgroups that could be disproportionally impacted by any new energy conservation standards. DOE requests feedback on any potential approaches that it could consider to address impacts on manufacturers, including small businesses.

[21] Available online at *www.sba.gov/document/support--table-size-standards.*

DOE requests information regarding the cumulative regulatory burden impacts on manufacturers of consumer air cleaners associated with (1) other DOE standards applying to different products that these manufacturers may also make and (2) product-specific regulatory actions of other federal agencies. DOE also requests comment on its methodology for computing cumulative regulatory burden and whether there are any flexibilities it can consider that would reduce this burden while remaining consistent with the requirements of EPCA.

IV. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified under the **DATES** heading, comments and information on matters addressed in this RFI and on other matters relevant to DOE's consideration of establishing test procedure and energy conservation standards for consumer air cleaners. These comments and information will aid in the development of a test procedure NOPR and energy conservation standard NOPR for consumer air cleaners in which DOE determines that establishing test procedure and energy conservation standards may be appropriate for these products.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Following this instruction, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit information to *www.regulations.gov* for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Anyone submitting comments through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide only documents that are: Not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on January 13, 2022, 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 January 14, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–01035 Filed 1–24–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0011; Project Identifier MCAI–2021–00485–T]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2C11 (Regional Jet Series 550) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by reports of corrosion on fuel clamshell couplings installed in the fuel tank, and a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require removing and replacing the fuel clamshell couplings on certain airplanes, and revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 11, 2022.

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

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

For service information identified in this NPRM, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0011; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0011; Project Identifier MCAI–2021–00485–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–16, dated April 26, 2021 (TCCA AD CF–2021–16) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2C11 (Regional Jet Series 550) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0011.

This proposed AD was prompted by reports of corrosion on fuel clamshell couplings installed in the fuel tank, and a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address corroded fuel clamshell couplings in the fuel tank, which, if not removed and replaced, could reduce the ability of the fuel coupling to conduct

lightning current and possibly lead to arcing and subsequent fuel tank ignition in the event of a lightning strike. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

MHI RJ Aviation has issued Service Bulletin 601R–28–068, Revision A, dated December 21, 2020; and Service Bulletin 670BA–28–041, Revision B, dated January 27, 2021. This service information describes procedures for removing and replacing the fuel clamshell couplings. These documents are distinct because they apply to different airplane models.

MHI RJ Aviation has also issued Temporary Revision (TR) 2S4–002, dated September 1, 2021. This service information describes a Critical Design Configuration Control Limitations (CDCCL) item for bonding of fuel and vent lines for lightning protection to preclude a spark.

MHI RJ Aviation has also issued the following TRs, which describe airworthiness limitations for fuel tank systems.

- TR 2S4–003, dated September 1, 2021; CRJ Series Regional Jet TR ALI–0741, dated October 13, 2020; and CRJ700/900/1000 Series Regional Jet TR ALI–0751, dated April 8, 2021, describe a procedure for removing and replacing self-bonding couplings in the fuel tank.
- CRJ Series Regional Jet TR ALI–0740, dated October 13, 2020, describes a CDCCL item for bonding of fuel and vent lines for lightning protection to preclude a spark.

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

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require removing and replacing the fuel clamshell couplings on certain airplanes and revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and CDCCLs. Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m)(1) of this proposed AD.

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI specifies to revise the CDCCL Items as introduced by Bombardier CL–600–2B19 TR 2D–009, dated October 24, 2020, in Appendix D—Fuel Systems Limitations of Part 2, Airworthiness Requirements, of the MHI RJ Maintenance Requirements Manual (MRM). This proposed AD does not require this action because the TR references Appendix D—Fuel Systems Limitations of Part 2, Airworthiness Requirements, of the MHI RJ MRM, which is not applicable to U.S. airplanes. As a result, this proposed AD would require that the information specified in MHI RJ TR 2S4–002, dated September 1, 2021, is incorporated into Supplement 4—FAA Fuel System Limitations of Part 2, Airworthiness Requirements, of the MHI RJ MRM as required by paragraph (h)(1) of this proposed AD. MHI RJ TR 2S4–002, dated September 1, 2021, addresses the unsafe condition with references that apply to U.S. airplanes and provides the same or better level of safety.

The MCAI also specifies to incorporate the new Fuel System Limitation Task 28–23–00–605 as introduced by Bombardier CL–600–2B19 TR 2D–008, dated October 24, 2020; and to revise the Task Description Effectivity as amended by Bombardier CL–600–2B19 TR 2D–010, dated April 8, 2021; in Appendix D—Fuel Systems Limitations of Part 2, Airworthiness Requirements, of the MHI RJ MRM. This proposed AD does not require these actions because these TRs also reference Appendix D—Fuel Systems Limitations of Part 2, Airworthiness Requirements, of the MHI RJ MRM, which is not applicable to U.S. airplanes. As a result, this proposed AD would require that the information specified in MHI RJ TR 2S4–003, dated September 1, 2021, is incorporated into Supplement 4—FAA Fuel System Limitations of Part 2, Airworthiness Requirements, of the MHI RJ MRM, as specified in paragraph (h)(2) of this proposed AD. MHI RJ TR 2S4–003, dated September 1, 2021, addresses the unsafe condition with references that apply to U.S. airplanes and provides the same or better level of safety.

Costs of Compliance

The FAA estimates that this proposed AD affects 914 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 21 work-hours × $85 per hour = $1,785	Up to $5,837 ..	Up to $7,622 ..	Up to $6,966,508.

* Table does not include estimated costs for revising the maintenance/inspection program.

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has

included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–0011; Project Identifier MCAI–2021–00485–T.

(a) Comments Due Date

The FAA must receive comments by March 11, 2022.

(b) Affected Airworthiness Directives (ADs)

None.

(c) Applicability

This AD applies to the MHI RJ Aviation ULC airplanes, certificated in any category, identified in paragraphs (c)(1) through (4) of this AD.

(1) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7002 through 7990 inclusive and 8000 through 8112 inclusive.

(2) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) and CL–600–2C11 (Regional Jet Series 550) airplanes, serial numbers 10002 through 10347 inclusive.

(3) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15499 inclusive.

(4) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19064 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by reports of corrosion on fuel clamshell couplings installed in the fuel tank, and a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address corroded fuel clamshell couplings in the fuel tank, which, if not removed and replaced, could reduce the ability of the fuel coupling to conduct lightning current and possibly lead to arcing and subsequent fuel tank ignition in the event of a lightning strike.

(f) Compliance

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

(g) Clamshell Coupling Replacement: Model CL–600–2B19 Airplanes

For Model CL–600–2B19 airplanes: Within 6,600 flight hours or 36 months, whichever occurs first after the effective date of this AD, remove and replace the fuel clamshell couplings, in accordance with Section 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–28–068, Revision A, dated December 21, 2020.

(h) Revision of the Existing Maintenance or Inspection Program: Model CL–600–2B19 Airplanes

For Model CL–600–2B19 airplanes: Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in paragraphs (h)(1) and (2) of this AD into Supplement 4—FAA Fuel System Limitations of Part 2, Airworthiness Requirements, of the MHI RJ Maintenance Requirements Manual (MRM).

(1) Critical Design Configuration Control Limitation (CDCCL) Item as specified in MHI RJ Temporary Revision (TR) 2S4–002, dated September 1, 2021.

(2) Fuel System Limitation Task 28–23–00–605 as specified in MHI RJ TR 2S4–003, dated September 1, 2021.

(i) Clamshell Coupling Replacement: Model CL–600–2C10, CL–600–2C11, CL–600–2D15, CL–600–2D24, and CL–600–2E25 Airplanes

For Model CL–600–2C10 and CL–600–2C11 airplanes; Model CL–600–2D15 and CL–600–2D24 airplanes, serial numbers 15001 through 15494 inclusive; and Model CL–600–2E25 airplanes: Within 8,800 flight hours or 48 months, whichever occurs first after the effective date of this AD, replace the fuel clamshell couplings, in accordance with Section 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–28–041, Revision B, dated January 27, 2021.

(j) Revision of the Existing Maintenance or Inspection Program: Model CL–600–2C10, CL–600–2C11, CL–600–2D15, CL–600–2D24, and CL–600–2E25 Airplanes

For Model CL–600–2C10, CL–600–2C11, CL–600–2D15, CL–600–2D24, and CL–600–2E25 airplanes: Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in paragraphs (j)(1) and (2) of this AD.

(1) Fuel System Limitation Task 28–21–15–601 as specified in [MHI RJ] CRJ Series Regional Jet TR ALI–0741, dated October 13, 2020; and Description Applicability for Airworthiness Limitation Task 28–21–15–601 as amended by [MHI RJ] CRJ700/900/1000 Series Regional Jet TR ALI–0751, dated April 8, 2021; in Section 4–28 of Part 2, Airworthiness Requirements, of the MHI RJ MRM.

(2) CDCCL Item as specified in [MHI RJ] CRJ Series Regional Jet TR ALI–0740, dated October 13, 2020, in Section 5–00 of Part 2, Airworthiness Requirements, of the MHI RJ MRM.

(k) No Alternative Actions, Intervals, or CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraphs (h) and (j) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m)(1) of this AD.

(l) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using MHI RJ

Service Bulletin 601R–28–068, dated December 3, 2020.

(2) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using MHI RJ Service Bulletin 670BA–28–041, dated December 3, 2020; or Revision A, dated December 21, 2020.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–16, dated April 26, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0011.

(2) For more information about this AD, contact Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on January 19, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01352 Filed 1–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB51

Pilot Program on Sharing of Suspicious Activity Reports and Related Information With Foreign Branches, Subsidiaries, and Affiliates

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing this notice of proposed rulemaking to seek public comment on the proposed establishment of a limited-duration pilot program, subject to conditions set by FinCEN, to permit a financial institution with a suspicious activity report (SAR) reporting obligation to share SARs and information related to SARs with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risk, in accordance with Section 6212(a) of the Anti-Money Laundering Act of 2020 (AML Act).

DATES: Written comments on this proposed rule must be received on or before March 28, 2022.

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

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2022–0002 and RIN 1506–AB51.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2022–0002 and RIN 1506–AB51.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *https://fincen.gov/contact.*

SUPPLEMENTARY INFORMATION:

I. Scope of Notice of Proposed Rulemaking (NPRM)

FinCEN is issuing this NPRM pursuant to 31 U.S.C. 5318(g)(8), as added by section 6212 of the AML Act,[1] which requires the Secretary of the Treasury (the Secretary) to issue rules establishing a pilot program that permits a financial institution subject to a SAR reporting requirement under 31 U.S.C. 5318(g) to share SARs and related information, including the fact that a SAR has been filed, with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks.[2]

II. Background

A. The Bank Secrecy Act (BSA)

Enacted in 1970 and amended most recently by the AML Act, the BSA aids in the prevention of money laundering, terrorism financing, and other illicit financial activity, and the protection of U.S. national security.[3] The purposes of the BSA include, among other things, ''requir[ing] certain reports or records that are highly useful in—(A) criminal, tax, or regulatory investigations, risk assessments, or proceedings; or (B) intelligence or counterintelligence activities, including analysis, to protect against terrorism'' and ''establish[ing] appropriate frameworks for information sharing'' among financial institutions and government authorities, among others.[4]

The Secretary is authorized to require domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with the BSA and the regulations promulgated thereunder or to guard against money laundering, the financing of terrorism, and other forms of illicit finance.[5] The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[6]

The BSA authorizes the Secretary to require the reporting of suspicious

[1] The AML Act was enacted as Division F, sections 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat 3388 (2021).

[2] For purposes of this NPRM, ''SARs and related information'' means a report filed pursuant to 31 U.S.C. 5318(g) and any information that would reveal the existence of such a report. Because SARs filed on insider abuse are filed under Federal banking agency regulations (*see, e.g.,* 12 CFR 21.11(c)(1)), and are not part of FinCEN's SAR regulations, they are not included in this definition and are not permitted to be shared under the pilot program FinCEN is proposing to establish by this NPRM.

[3] The BSA is codified at 12 U.S.C. 1829b, 1951–1959 and 31 U.S.C. 5311–5314, 5316–5336. Implementing regulations are codified at 31 CFR Chapter X. Section 6212 of the AML Act amends 31 U.S.C. 5318 by adding Section 5318(g)(8).

[4] 31 U.S.C. 5311(1), (5).

[5] 31 U.S.C. 5318(a)(2).

[6] 31 U.S.C. 310(b)(2); Treasury Order 180–01, (Jan. 14, 2020).

transactions.[7] FinCEN's implementing regulations require a financial institution to file a SAR if the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) Involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA; or (iii) lacks a business or apparent lawful purpose or is not the sort in which the particular customer would normally engage and the financial institution knows of no reasonable explanation for the transaction.[8] Pursuant to FinCEN's regulations implementing the BSA, financial institutions obligated to file SARs include banks, casinos and card clubs, money services businesses, brokers or dealers in securities, mutual funds, insurance companies, futures commission merchants and introducing brokers in commodities, loan and finance companies, and housing government-sponsored enterprises.[9]

B. SAR Confidentiality Regulations

The BSA provides that a financial institution and its directors, officers, employees, and agents are prohibited from notifying any person involved in a suspicious transaction that the transaction was reported, or from otherwise revealing any information that would reveal that the transaction has been reported.[10] FinCEN has issued implementing regulations that generally prohibit the disclosure of a SAR or information revealing the existence of a SAR by a financial institution and its directors, officers, employees, and agents.[11] Provided that no person involved in a reported transaction is notified that the transaction has been reported, the regulation specifies that it is not to be construed as prohibiting disclosure to appropriate law enforcement agencies, regulatory authorities that examine the financial institution for compliance with the BSA, or FinCEN.[12] The regulation further specifies that it is not to be construed as prohibiting a financial institution to share the underlying facts, transactions, and documents upon which a SAR is based, including sharing such materials with another financial institution for the preparation of a joint SAR.[13] It also specifies that a financial institution can share a SAR within its corporate organizational structure for purposes consistent with Title II of the BSA as determined by regulation or in guidance.[14]

C. FinCEN's Prior Guidance on Sharing SARs Within Corporate Organizational Structures

In 2006, FinCEN and the Federal banking agencies issued guidance on the sharing of SARs with head offices and controlling companies (2006 Guidance).[15] The 2006 Guidance states that a U.S. branch of a foreign bank may share a SAR with its head office, and a U.S. bank or savings association may share a SAR with its controlling company, whether domestic or foreign.[16] At the same time, FinCEN issued similar guidance permitting securities broker-dealers, futures commission merchants, and introducing brokers in commodities to share SARs with parent entities, both domestic and foreign, and later in 2006, FinCEN released related guidance to mutual funds.[17] FinCEN permitted such sharing because a financial institution's head office or controlling entity may have a need to discharge oversight responsibilities with respect to enterprise-wide risk management and compliance with applicable laws and regulations.[18]

In 2010, following an amendment to FinCEN's SAR regulations,[19] FinCEN issued guidance on sharing SARs with certain U.S. affiliates of depository institutions (2010 Guidance).[20] The 2010 Guidance generally permits the sharing of SARs and related information by depository institutions with their affiliates that are subject to a SAR regulation. U.S. affiliates of depository institutions that are subject to SAR filing obligations include brokers or dealers in securities, futures commission merchants and introducing brokers in commodities, money services businesses, and residential mortgage lenders or originators.[21] At the same time, FinCEN issued similar guidance permitting securities broker-dealers, mutual funds, futures commission merchants, and introducing brokers in commodities to share SARs with certain affiliates.[22] The 2010 Guidance also

[7] 31 U.S.C. 5318(g)(1).

[8] *See, e.g.,* 31 CFR 1020.320. Financial institutions must file with FinCEN, to the extent and in the manner required, a report of any suspicious transaction relevant to a possible violation of law or regulation. *See, e.g.,* 31 CFR 1022.320(a)(2)(iv) (requiring a money services business to file a SAR if it knows, suspects, or has reason to suspect that the transaction involves use of the money services business to facilitate criminal activity). A financial institution may also file a SAR with respect to any suspicious transaction that it believes is relevant to a possible violation of law or regulation but whose reporting is not required by FinCEN regulations. *See, e.g.,* 31 CFR 1020.320(a)(1).

[9] FinCEN has issued implementing regulations at 31 CFR 1020.320 (SAR rule for banks); 1021.320 (SAR rule for casinos and card clubs); 1022.320 (SAR Rule for money services businesses); 1023.320 (SAR rule for brokers or dealers in securities); 1024.320 (SAR rule for mutual funds); 1025.320 (SAR rule for insurance companies); 1026.320 (SAR rule for futures commission merchants and introducing brokers in commodities); 1029.320 (SAR rule for loan or finance companies); 1030.320 (SAR rule for housing government-sponsored enterprises).

[10] 31 U.S.C. 5318(g)(2)(A), as amended by Section 6212(b) of the AML Act.

[11] *See, e.g.,* 31 CFR 1020.320(e).

[12] *See, e.g.,* 31 CFR 1020.320(e)(1)(ii)(A)(1).

[13] *See, e.g.,* 31 CFR 1020.320(e)(1)(ii)(A)(2)(i).

[14] *See, e.g.,* 31 CFR 1020.320(e)(1)(ii)(B).

[15] *See* Financial Crimes Enforcement Network, Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Depository Insurance Corporation, and the Office of Thrift Supervision *Interagency Guidance on Sharing Suspicious Activity Reports with Head Offices and Controlling Companies,* (Jan. 20, 2006), available at *https://www.fincen.gov/resources/statutes-regulations/guidance/interagency-guidance-sharing-suspicious-activity-reports.*

[16] *Id.* The 2006 Guidance states that depository institutions, as part of their AML programs, must have written confidentiality agreements or arrangements in place specifying that the head office or controlling company must protect the confidentiality of the SARs through appropriate internal controls. The Guidance states that the confidentiality agreements or arrangements must also address concerns about the ability of the foreign entity to protect the SAR in light of possible requests for disclosure abroad that may be subject to foreign law.

[17] *See* Financial Crimes Enforcement Network, *Guidance on Sharing Suspicious Activity Reports by Securities Broker-Dealers, Futures Commission Merchants, and Introducing Brokers in Commodities,* Jan. 20, 2006, available at *https://www.fincen.gov/resources/statutes-regulations/guidance/guidance-sharing-suspicious-activity-reports-securities.* On October 4, 2006, FinCEN also issued guidance permitting mutual funds to share SARs with the investment adviser that controls the fund, whether domestic or foreign. *See* Financial Crimes Enforcement Network, FIN–2006–G013, *Frequently Asked Questions Suspicious Activity Reporting Requirements for Mutual Funds,* (Oct. 4, 2006), available at *https://www.fincen.gov/resources/statutes-regulations/guidance/frequently-asked-questions-suspicious-activity-reporting.*

[18] *See* the 2006 Guidance; *see also* Financial Crimes Enforcement Network, *Guidance on Sharing of Suspicious Activity Reports by Securities Broker-Dealers, Futures Commission Merchants, and Introducing Brokers in Commodities,* (Jan. 20, 2006).

[19] Financial Crimes Enforcement Network, *Confidentiality of Suspicious Activity Reports,* 75 FR 75593, (Dec. 3, 2010).

[20] Financial Crimes Enforcement Network, FIN–2010–G006, *Sharing Suspicious Activity Reports by Depository Institutions with Certain U.S. Affiliates,* (Nov. 23, 2010) (the ''2010 Guidance''), available at *https://www.fincen.gov/sites/default/files/shared/fin-2010-g006.pdf.*

[21] *See* 31 CFR 1023.320 (brokers or dealers in securities); 1026.320 (futures commission merchants and introducing brokers in commodities); 1022.320 (money services businesses); 1029.320 (loan or finance companies).

[22] Financial Crimes Enforcement Network, FIN–2010–G005, *Sharing Suspicious Activity Reports by Securities Broker-Dealers, Mutual Funds, Futures Commission Merchants, and Introducing Brokers in Commodities with Certain U.S. Affiliates,* (Nov. 23. 2010), available at *https://www.fincen.gov/resources/statutes-regulations/guidance/sharing-suspicious-activity-reports-securities-broker.*

explained that ''[b]ecause foreign branches of U.S. banks are regarded as foreign banks for purposes of the BSA, under this guidance, they are 'affiliates' that are not subject to a SAR regulation'' and therefore a U.S. bank may not share SARs, or any information that would reveal the existence of the SAR, with its foreign branches. In 2017, FinCEN also issued guidance confirming that casinos and card clubs may share SARs with domestic parents and affiliates, subject to certain limitations.[23]

The 2006 and 2010 Guidance also made clear that there may be circumstances under which the financial institution, its affiliate, or both entities could be liable for direct or indirect disclosure of a SAR or any information that would reveal the existence of a SAR. Accordingly, the 2006 and 2010 Guidance stated that a financial institution, as part of its internal controls, should have policies and procedures in place to protect the confidentiality of the SAR.[24]

D. The AML Act

On January 1, 2021, Congress enacted the AML Act to, among other things, improve coordination and information sharing among the agencies tasked with administering AML/countering the financing of terrorism (AML/CFT) requirements and to modernize the AML/CFT laws to better adapt the government and private sector response to new and emerging threats.[25]

Section 6212(a) of the AML Act amends the BSA by adding 31 U.S.C. 5318(g)(8), which requires the Secretary to issue rules establishing a pilot program that permits a financial institution with a SAR reporting obligation to share SARs and related information with its foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks.[26] In issuing the rules, the Secretary must ensure that the sharing of information is limited by the requirements of Federal and State law enforcement operations, takes into account potential concerns of the intelligence community, is subject to appropriate standards and requirements regarding data security and the confidentiality of personally identifiable information, and excludes sharing with foreign branches, subsidiaries, and affiliates in certain jurisdictions.[27] Further, the pilot program permits the Secretary to consider, implement, and enforce provisions that would hold a foreign affiliate of a U.S. financial institution liable for the disclosure of SARs and related information shared under the pilot program.[28]

The pilot program must terminate three years after the date of the AML Act's enactment (*i.e.,* January 1, 2024), unless the Secretary extends the pilot for not more than two years upon submitting a report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services that includes: (1) A certification and a detailed explanation of the reasons that the extension is in the national interest of the United States; (2) an evaluation of the usefulness of the pilot program, including a detailed analysis of any illicit activity identified or prevented as a result of the program, after appropriate consultation by the Secretary with the participants in the pilot program; and (3) a detailed legislative proposal providing for a long-term extension of activities under the pilot program, measures to ensure data security, and confidentiality of personally identifiable information, including expected budgetary resources for those activities, if the Secretary determines that a long-term extension is appropriate.[29]

Under the pilot program, a financial institution may not share SARs or related information with a foreign branch, subsidiary, or affiliate located in: (1) The People's Republic of China; (2) the Russian Federation; or (3) a jurisdiction that is a state sponsor of terrorism, that is subject to sanctions imposed by the Federal Government, or that the Secretary has determined cannot reasonably protect the security and confidentiality of such information.[30] The Secretary may make exceptions, on a case-by-case basis, for a financial institution located in the People's Republic of China or the Russian Federation by notifying the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services that such an exception is in the national security interest of the United States.[31]

Not later than 360 days after the pilot program rules are promulgated, and annually thereafter for three years, the Secretary, or the Secretary's designee, must brief the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services on: (1) The degree of information sharing permitted under the pilot program and a description of criteria used by the Secretary to evaluate the appropriateness of the information sharing; (2) the effectiveness of the pilot program in identifying or preventing the violation of a United States law or regulation and mechanisms that may improve that effectiveness; and (3) any recommendations to amend the design of the pilot program.[32]

Information related to reports of suspicious transactions received by a financial institution from a foreign affiliate with respect to a suspicious transaction relevant to a possible violation of law or regulation shall be subject to confidentiality requirements that are the same as those that apply to SARs filed under 31 U.S.C. 5318(g)(1).[33] No financial institution may establish or maintain any operation located outside of the United States the primary purpose of which is to ensure compliance with the BSA as a result of the sharing granted under the pilot program.[34] Finally, an ''affiliate'' is defined for purposes of the pilot program as ''an entity that controls, is controlled by, or is under common control with another entity.'' [35] The terms ''Bank Secrecy Act,'' ''State bank Supervisor,'' and ''State credit union supervisor'' have the same meanings given in Section 6003 of the AML Act.

III. Section-by-Section Analysis

This proposed rule would add a new section at 31 CFR 1010.240 establishing a pilot program that permits financial institutions with a SAR reporting obligation under 31 U.S.C. 5318(g) and FinCEN's regulations to share SARs and related information with their foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks.

Application process: In issuing the pilot program rules, FinCEN must take into account certain considerations to ensure that the sharing of information permitted under the pilot program is limited by the requirements of Federal

[23] Financial Crimes Enforcement Network, FIN–2017–G001, *Sharing Suspicious Activity Reports with U.S. Parents and Affiliates of Casinos,* (Jan. 4, 2017), available at *https://www.fincen.gov/sites/default/files/2017-01/FinCENGuidanceJan4_508FINAL.pdf.*

[24] *See* the 2006 Guidance, *supra* note 15, (stating that a depository institution must have written confidentiality agreements or arrangements in place specifying that the head office or controlling company must protect the confidentiality of the SAR through appropriate internal controls); *see also* the 2010 Guidance, *supra* note 20, (stating that a depositiory institution, as part of its internal controls, should have policies and procedures in place to ensure its affiliates protect the confidentiality of the SAR).

[25] *See* AML Act Section 6002.

[26] *See* 31 U.S.C. 5318(g)(8).

[27] *See* 31 U.S.C. 5318(g)(8)(A)(ii).

[28] *See* 31 U.S.C. 5318(g)(8)(B)(ii).

[29] *See* 31 U.S.C. 5318(g)(8)(B)(iii).

[30] *See* 31 U.S.C. 5318(g)(8)(C)(i).

[31] *See* 31 U.S.C. 5318(g)(8)(C)(ii).

[32] *See* 31 U.S.C. 5318(g)(8)(D).

[33] *See* 31 U.S.C. 5318(g)(9).

[34] *See* 31 U.S.C. 5318(g)(10).

[35] *See* 31 U.S.C. 5318(g)(11)(A).

and State law enforcement operations, takes into account potential concerns of the intelligence community, and is subject to appropriate standards and requirements regarding data security and the confidentiality of personally identifiable information. Participant financial institutions must also comply with the applicable jurisdictional restrictions described above.

To that end, the proposed rule requires a financial institution to submit a written application to FinCEN that: (1) Identifies the institution's point of contact for pilot program-related correspondence; (2) specifies the foreign branches, subsidiaries, and affiliates with which the financial institution intends to share SARs and related information; (3) specifies the particular purpose or purposes for which the foreign branches, subsidiaries, and affiliates intend to use SARs and related information, including the operational jurisdictions of such entities, as well as whether such entities will be providing reciprocal information to the applicant financial institution; (4) provides an estimated commencement date for the pilot program, and; (5) describes internal controls in place to prevent unauthorized disclosures of SARs and related information.[36] Given the sensitive nature of the information contained in or relating to a SAR, including personally identifiable information of U.S. persons, and the jurisdictional limitations set out in the statute, FinCEN believes a formal application and approval process is necessary to ensure that adequate safeguards are in place before allowing a financial institution to share SARs and related information with its foreign branches, subsidiaries, and affiliates.

The proposed rule also specifies that applicant financial institutions should, at a minimum, implement certain controls, including confidentiality agreements and procedures for personnel located in the United States to review requests from foreign law enforcement, foreign regulators, or an outside foreign party for SARs and related information, and to immediately notify FinCEN of such requests. Given the sensitive nature of SAR information, participant financial institutions and their foreign branches, subsidiaries, or affiliates must direct the requesting authority to both contact FinCEN about obtaining the requested SAR or related information and to seek to obtain such records or information through a request to the United States pursuant to a mutual legal assistance treaty or another appropriate mechanism for obtaining records from the United States. Participant financial institutions shall also maintain records sufficient to identify the specific foreign jurisdictions in which branches, subsidiaries, or affiliates of financial institutions are located and that received any specific SAR or related information. Such records shall be maintained so as to enable the participant financial institution to readily report this information to FinCEN upon request. FinCEN is including this requirement because, in the event of an unauthorized disclosure, it will assist in FinCEN's efforts to identify those individuals and entities that were in possession of SARs and related information that were inappropriately disclosed.

The proposed rule requires that an application specify those foreign branches, subsidiaries, and affiliates with which a financial institution intends to share SARs and related information pursuant to the proposed pilot program. Upon receipt of an application, FinCEN would determine a financial institution's suitability for participation in the pilot program based on FinCEN's assessment of the financial institution's internal controls, as well as the entities with which it intends to share information and corresponding jurisdictions in which the entities are located. FinCEN will notify the financial institution's relevant Federal functional regulator of the application. FinCEN will also consult with the relevant Federal functional regulator and other relevant agencies on the application, as needed. The proposed rule also states that FinCEN will share information received pursuant to the application process with relevant Federal functional regulators, or, as appropriate, other relevant agencies.[37] The proposed rule also states that FinCEN will limit the sharing of SARs and related information based on the requirements of Federal and State law enforcement operations, and will take into account concerns of the intelligence community.

FinCEN expects that the resourcing and strengths of compliance programs and internal control frameworks will vary among applicant financial institutions. Consequently, the proposed rule permits FinCEN to require implementation of additional internal controls to ensure data security and confidentiality of SARs and related information, including the personally identifiable information contained therein, as a prerequisite to approving an application. As the pilot program matures, and best practices for ensuring data security and confidentiality are identified, FinCEN may require certain participant financial institutions to implement additional internal controls as a condition for continued participation in the pilot program. In response to concerns of the intelligence community, or to take into account requirements for State and Federal law enforcement operations, FinCEN may also require participant financial institutions to enhance or modify internal controls as a condition for continued participation in the pilot program.

The proposed rule also provides a mechanism by which participant financial institutions may seek modifications to the internal controls specified in its FinCEN-approved application to address operational contingencies, resourcing challenges, or other circumstances. Specifically, the proposed rule would require participant financial institutions to submit a request to FinCEN that details the nature and extent of the requested changes to applicable internal controls before implementing any such modifications. FinCEN, in consultation with relevant Federal functional regulators, as needed, would approve or reject such requests for modification, or condition its approval on implementation of additional controls, as appropriate. FinCEN, in its sole discretion, may also modify a financial institution's participation in the pilot program based on the requirements of Federal and State law enforcement operations or concerns of the intelligence community.

The proposed rule would permit FinCEN to terminate a financial institution's participation in the pilot program at any time. Grounds for termination could include, but are not limited to, actual, or unreasonable risk of, unauthorized disclosures of SARs and related information; significant internal control deficiencies identified while participating in the pilot program; failure to adhere to the specific requirements for participation; or any other issues that indicate that a participant financial institution is unable to adequately safeguard against unauthorized disclosures of SARs and

[36] *See* 31 CFR 1020.320(e), 1021.320(e), 1022.320(d), 1023.320(e), 1024.320(d), 1025.320(e), and 1026.320(e). Filing institutions, and their current and former directors, officers, employees, and agents, are prohibited from disclosing SARs, or any information that would reveal the existence of a SAR.

[37] While there is no consultation requirement in 31 U.S.C. 5318(g)(8), FinCEN intends to consult with Federal functional regulators with respect to their assessment of the financial institution's suitability for participation in the pilot program. For example, the relevant Federal functional regulator may have particular expertise with respect to a financial institution's risk profile and supervisory history with respect to BSA.

related information or to ensure adequate data security and confidentiality of personally identifiable information.

Given the limited duration of the pilot program, FinCEN will make every effort to expeditiously review applications and provide responses to potential participant financial institutions in a timely manner. To that end, FinCEN will seek to provide responses within 90 days of receipt of an application to participate in the pilot program. FinCEN welcomes comments on whether this time period is sufficient to encourage participation in the pilot program during the timeframe allotted by Congress.

Quarterly reporting requirement: The proposed rule would require participant financial institutions to report certain information to FinCEN on a quarterly basis, including: (1) The total number of SARs and related information shared; (2) the name and jurisdiction of each entity that received SARs and related information, the relationship between the entity and the participant financial institution, and the intended purposes and uses for which the SARs and related information were shared; (3) legal and compliance issues encountered; (4) technical difficulties and challenges; (5) enhancements to the financial institution's AML/CFT program enabled as a result of participating in the pilot program, to include reallocation of resources to higher-priority AML/CFT risks, such as those described in FinCEN's National AML/CFT Priorities, issued pursuant to Section 5318(h)(4)(A) of the BSA; and, (6) lessons learned, to include any identified inefficiencies in the institution's AML/CFT program. The proposed rule's quarterly reporting requirement would provide a control to ensure that the sharing of information permitted under the pilot program is in compliance with the statutory requirements with regard to Federal and State law enforcement operations, concerns of the intelligence community, and ensuring appropriate standards and requirements are in place with respect to data security and confidentiality of personally identifiable information. FinCEN expects that quarterly reporting will yield critical information and data that should shed light on the effectiveness of the pilot program and inform best practices for information sharing and confidentiality of SARs and related information. FinCEN intends to use this information to satisfy specific statutory reporting requirements, including annual implementation updates to Congress, as well as the report and accompanying legislative proposal for any request to extend the pilot program.[38]

Quarterly reporting should also enable FinCEN, and Federal functional regulators, as appropriate, to identify pilot program-related internal control deficiencies at participant financial institutions that may need to be addressed as a condition for continued participation in the pilot program. For instance, a participant financial institution may report a legal and compliance issue under the rule, such as an internal audit finding of ineffective controls on SAR confidentiality. To ensure ongoing compliance with the requirements of the pilot program, and a financial institution's suitability to continue to participate, FinCEN intends to share these quarterly reports with relevant Federal functional regulators and consult with them as appropriate.

Prohibition involving certain jurisdictions: The proposed rule would prohibit participant financial institutions from sharing SARs and related information with foreign branches, subsidiaries, and affiliates in specific jurisdictions, including the People's Republic of China, the Russian Federation, jurisdictions that are state sponsors of terrorism, jurisdictions subject to sanctions imposed by the Federal Government, and jurisdictions the Secretary has determined cannot reasonably protect the security and confidentiality of such information.

For purposes of this section, a ''state sponsor of terrorism'' is a jurisdiction so determined by the U.S. Department of State. Jurisdictions ''subject to sanctions imposed by the Federal Government'' are jurisdictions with governments whose property and interests in property in U.S. jurisdiction are blocked pursuant to U.S. sanctions authorities, as well as jurisdictions subject to broad prohibitions on transactions by U.S. persons involving that jurisdiction, such as prohibitions on importing or exporting goods, services, or technology to the jurisdiction or dealing in goods or services originating from the jurisdiction, pursuant to U.S. sanctions authorities. FinCEN welcomes comments on this interpretation, and encourages financial institutions to monitor for sanctions issued by the U.S. Government to ensure compliance with this requirement.

Under 31 U.S.C. 5318(g)(8)(C)(i)(III)(c), as added by Section 6212(C)(i)(III)(cc) of the AML Act, FinCEN has determined that a jurisdiction that FinCEN has identified as a primary money laundering concern pursuant to Sections 311 of the USA PATRIOT Act (Pub. L. 107–56) or 9714 of the Combating Russian Money Laundering Act (Pub. L. 116–283) cannot reasonably protect the security and confidentiality of SARs and related information given the deficient AML/CFT controls in those jurisdictions as identified by FinCEN. The proposed rule, therefore, also prohibits financial institutions from sharing SARs and related information with foreign branches, subsidiaries, and affiliates in jurisdictions identified by FinCEN as such.[39] FinCEN may further restrict sharing of SARs and related information, as authorized by statute, based on requirements of Federal or State law enforcement operations, the concerns of the intelligence community, or where FinCEN has otherwise determined that such information cannot reasonably be protected.

The proposed rule would authorize the Secretary to grant narrow exceptions on a case-by-case basis for foreign branches, subsidiaries, and affiliates located in the People's Republic of China and the Russian Federation. Under the proposed rule, the Secretary would be required to notify the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate and the Committee on Financial Services of the U.S. House of Representatives that such exceptions are in the national security interest of the United States.

Treatment of foreign jurisdiction-originated reports. As required by 31 U.S.C. 5318(g)(9), as added by the AML Act, information related to a report received by a financial institution from a foreign affiliate with respect to a suspicious transaction relevant to a possible violation of law or regulation shall be subject to the same confidentiality requirements as reports filed under 31 U.S.C. 5318(g).

Prohibition on offshoring compliance operations: As required by 31 U.S.C. 5318(g)(10), as added by the AML Act, the proposed rule would expressly prohibit participant financial institutions from establishing or maintaining any operation located outside of the United States the primary purpose of which is to ensure compliance with the BSA as a result of the information sharing granted by this pilot program.

Duration of the pilot program: The proposed rule implements the statutory requirement that the pilot program terminate three years after enactment of

[38] As the pilot program matures, FinCEN may request additional data points from pilot program participants to fulfil these statutory obligations.

[39] *See https://www.fincen.gov/resources/statutes-and-regulations/311-special-measures.*

the AML Act. The rule would permit the Secretaryto extend the pilot program for not longer than two years upon reporting to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, as required by the AML Act.

Prohibition on Disclosure: Under 31 U.S.C. 5318(g)(8)(B)(ii), the pilot program shall ''permit the Secretary to consider, implement, and enforce provisions that would hold a foreign affiliate of a U.S. financial institution liable for the disclosure of SARs and related information.'' The proposed rule provides that, except to the extent authorized pursuant to the pilot program or in existing regulations or guidance, a participant financial institution, its foreign branches, subsidiaries and affiliates, and certain other associated individuals may not disclose a SAR or related information shared pursuant to the pilot program. The reference to ''existing regulations and guidance'' in the proposed rule accounts for exceptions to SAR confidentiality that apply to filing institutions located or doing business within the United States, and their directors, officers, employees, or agents.[40]

A participant financial institution must implement policies, procedures, and internal controls that are reasonably designed to ensure that its foreign branches, subsidiaries, or affiliates do not permit unauthorized disclosures of SARs or related information. FinCEN, in consultation with relevant Federal functional regulators, as needed, will assess the sufficiency of a financial institution's internal controls before approving an application to participate in the pilot program. SARs and related information contain highly sensitive information, including sensitive information about U.S. persons, and it is vital that they be protected. FinCEN encourages participant financial institutions to ensure that their foreign branches, subsidiaries, or affiliates have sufficient internal controls in place prior to sharing any SARs or related information.

Under 31 U.S.C. 5321 and 31 U.S.C. 5322, civil penalties and criminal sanctions may be imposed on participant financial institutions, directors, officers, employees, or agents for violations of the prohibition on the disclosure of SARs and related information. The proposed rule makes clear that this prohibition also applies to foreign affiliates, and that foreign affiliates can be held liable for civil penalties and criminal sanctions pursuant to 31 U.S.C. 5321 and 31 U.S.C. 5322. Civil money penalties under 31 U.S.C. 5321(a)(1) apply to a ''domestic financial institution or nonfinancial trade or business,'' and the term ''domestic financial institution'' is defined as referring to ''an action in the United States'' of the financial institution.[41] However, 31 U.S.C. 5318(g)(8)(B)(ii) specifically authorizes the Secretary to implement and enforce ''provisions that would hold a foreign affiliate of a U.S. financial institution liable for the disclosure of SARs and related information.'' In light of that mandate, FinCEN would construe its authority to impose civil money penalties under 31 U.S.C. 5321(a)(1) as applying to foreign affiliates that disclose SARs and related information in violation of the proposed rule, without regard to whether the unauthorized disclosure occurs in the United States.

Definitions: 31 U.S.C. 5318(g)(11) defines an affiliate as ''an entity that controls, is controlled by, or is under common control with another entity.'' The broad nature of this definition would include branches and subsidiaries of participant financial institutions. Therefore, the proposed rule both adopts this definition and includes branches and subsidiaries within the term affiliate for the purpose of this proposed pilot program.

IV. Request for Comment

FinCEN welcomes comment on all aspects of this proposed rule and encourages all interested parties to provide their views.

With respect to the effect of establishing a pilot program to permit financial institutions to share SARs with foreign branches, subsidiaries, and affiliates, FinCEN in particular requests comment from financial institutions and members of the public on the following questions:

(1) Describe the expected costs and associated burdens of complying with the proposed pilot program requirements, to the extent that a financial institution chooses to participate.

(2) Describe the expected impact, including costs and/or associated burdens, of complying with the statutory prohibition on offshoring compliance operations within the context of the proposed pilot program.

(3) Describe expected technical challenges to implementation that could make it harder or more expensive to participate in the pilot program.

(4) Describe the expected benefits to a financial institution from being permitted to share SARs and related information with a foreign branch, subsidiary, or affiliate for the purpose of combating illicit finance risks. Would the proposed sharing of SARs and related information enable a financial institution to shift or allocate resources to higher-priority AML/CFT risks?

(5) Has FinCEN struck a reasonable balance between facilitating information sharing of SARs and related information permitted under the pilot program and imposing conditions to protect the confidentiality and prevent unauthorized disclosures of SARs and related information? If not, how could FinCEN more reasonably balance these considerations?

(6) Describe potential challenges in protecting the confidentiality of SARs and related information and preventing unauthorized disclosures in connection with participation in the pilot program. Are there additional provisions FinCEN could include in the pilot program that would better enable a financial institution to comply with the program confidentiality requirements and ensure accurate reporting? How does a financial institution expect to protect SAR confidentiality and prevent unauthorized SAR disclosures if foreign regulatory examinations of foreign affiliates of U.S. financial institutions requests access to such foreign institutions' files? Are there jurisdictions in which this information would be subject to disclosure to non-government parties by legal process?

(7) For the quarterly reports FinCEN is proposing to require, are there any other particular metrics FinCEN should include in the current list for required feedback?

(8) Is FinCEN's proposed timeline of 90 days to respond to application requests reasonable? Would such a timeline encourage financial institutions to participate in the pilot program?

(9) Should FinCEN consider a broader, longer-term program that would enable financial institutions to share SARs and related information with their foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks?

V. Regulatory Analysis

A. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess costs and

[40] *See, e.g.,* 31 CFR 1020.320(e)(1)(ii) (banks).

[41] 31 U.S.C. 5312(b)(1); *see also* 31 CFR 1010.100(o) (stating that ''domestic'' refers ''to the doing of business within the United States'' or ''the performance . . . of functions within the United States'').

benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed regulation on its face would apply to all financial institutions with a SAR reporting obligation under 31 U.S.C. 5318(g). However, because of the voluntary nature of the proposed rule, only financial institutions choosing to participate in the pilot program would be affected. FinCEN believes the proposed regulatory changes are unlikely to have a significant economic impact on a substantial number of small entities, as smaller entities are less likely to have foreign-based branches, subsidiaries, and affiliates. FinCEN, however, recognizes the limitations in readily available data about potential costs and benefits and has prepared an initial regulatory flexibility analysis pursuant to the RFA. FinCEN welcomes comments on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the comment period.

i. Statement on the Need for, and Objectives of, the Proposed Regulations

The need for, and objectives of, the proposed regulations are established in 31 U.S.C. 5318(g), as amended by Section 6212 of the AML Act. The purpose of the proposed regulation is to establish a pilot program that permits a financial institution with a reporting obligation under 31 U.S.C. 5318(g) to share information related to SARs, including that such a report has been filed, with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks.

ii. Small Entities Affected by the Proposed Regulation

The proposed regulations would apply to financial institutions with a reporting obligation under 31 U.S.C. 5318(g). FinCEN most recently identified these institutions in the Paperwork Reduction Act of 1995 (PRA) notice renewing information collection related to SARs.[42] While the full list of financial institutions with a reporting obligation under 31 U.S.C. 5318(g) includes a substantial number of small entities, FinCEN does not believe that a substantial number of small entities would be affected by the proposed regulation. The proposed pilot program would apply only to those institutions that choose to participate, and it is unlikely that small entities would choose to participate in a SAR sharing pilot program, as they are less likely to have foreign branches, subsidiaries, and affiliates.

iii. Compliance Requirements

The compliance costs for entities that choose to participate in the pilot program would include implementation and administrative costs. These would include costs to file an initial application with, and provide quarterly updates to, FinCEN, as well as costs associated with ensuring that adequate controls are in place to abide by the conditions imposed by FinCEN.

iv. Duplicative, Overlapping, or Conflicting Federal Rules

FinCEN is not aware of any duplicative, overlapping, or conflicting Federal rules with respect to pilot programs that enable financial institutions to share SARs and related information with their foreign branches, subsidiaries, and affiliates. As discussed previously, existing guidance from FinCEN and Federal functional regulators prohibits U.S. financial institutions from sharing SARs with foreign branches, subsidiaries, and affiliates, and allows only for sharing SARs with head offices and controlling entities of U.S. financial institutions, consistent with the 2006 Guidance, and U.S. affiliates within a financial institution's corporate organizational structure, consistent with the 2010 Guidance.

v. Significant Alternatives to the Proposed Regulations

FinCEN considered foregoing the requirement for financial institutions to submit an application and provide quarterly updates on the progress of the pilot program. Given the sensitive nature of the information contained in or relating to a SAR, including personally identifiable information of U.S. persons, and the jurisdictional limitations set out in the statute, FinCEN proposes requiring an application and approval process to ensure that adequate safeguards are in place before allowing a financial institution to share information with its foreign branches, subsidiaries, and affiliates. Additionally, as required by the AML Act, FinCEN must provide annual updates to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the pilot program, and submit a detailed legislative proposal concerning the long-term extension of the pilot, if appropriate. FinCEN therefore proposes to require financial institutions to provide quarterly updates to ensure that FinCEN, in consultation with relevant Federal functional regulators, as needed, can meet these statutory requirements.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Taking into account the factors noted above and using conservative estimates of average labor costs in evaluating the cost of the burden imposed by the proposed regulation, FinCEN has determined that it is not required to prepare a written statement under Section 202.

D. Paperwork Reduction Act of 1995

The recordkeeping and reporting requirements contained in this proposed rule (31 CFR 1010.240) have been submitted by FinCEN to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. Written comments and

[42] Financial Crimes Enforcement Network, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Bank Secrecy Act Reports by Financial Institutions of Suspicious Transactions at 31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, and 1029.320, and FinCEN Report 111—Suspicious Activity Report,* 85 FR 31598 (May 26, 2020).

recommendations for the proposed information collection can be submitted by visiting *www.reginfo.gov/public/do/PRAMain.* Find this particular document by selecting ''Currently Under Review—Open for Public Comments'' or by using the search function. Comments are welcome and must be received by March 28, 2022. In accordance with the requirements of the PRA and its implementing regulations, 5 CFR part 1320, the following information concerning the collections of information is presented to assist those persons wishing to comment on the information collections. Currently, financial institutions subject to a SAR requirement must collect, retain, and report certain information related to suspicious activity that takes places by, at, or through the financial institution. This proposed rule would permit financial institutions to share this information with their foreign branches, subsidiaries, and affiliates, subject to the conditions and prohibitions described above. As part of the application process to request participation in the pilot program, FinCEN is proposing to require a written submission with quarterly updates. As there is no requirement to participate in the pilot program, FinCEN has calculated an hourly burden only for those financial institutions that voluntarily decide to participate.

Description of Recordkeepers: Banks, casinos and card clubs, money services businesses, brokers or dealers in securities, mutual funds, insurance companies, futures commission merchants and introducing brokers in commodities, loan or finance companies, and housing government sponsored enterprises.

Estimated Number of Affected Institutions: FinCEN estimates that approximately 100 financial institutions will decide to participate in the pilot program, which will permit the financial institutions to share SARs and related information with their foreign branches, subsidiaries, and affiliates. Because this is a new voluntary program, this is an estimate, and FinCEN is requesting comment from institutions that anticipate voluntarily participating in the pilot program.

Estimated Average Annual Burden Hours per Recordkeeper: Fewer than 59 hours per participant financial institution.

FinCEN estimates that the recordkeeping burden per recordkeeper to submit a written application to FinCEN requesting participation in the pilot program, including a description of internal controls in place to limit unauthorized disclosures of SARs and related information, is 20 hours per year. This includes filing an application to participate that includes notice that a person has been designated as a point-of-contact for ongoing correspondence with FinCEN during the pilot program, written pre-commencement notice that a participant financial institution has the appropriate agreements and internal controls in place to begin sharing SARs and related information, and written notice that a commencement date has been set. FinCEN estimates an additional one-hour-per-year burden in the event a participant financial institution needs to contact FinCEN in writing to request advance approval for any modifications to the commitments in the written application. FinCEN is requesting comment on how frequently a prospective participant financial institution anticipates that it may need to modify the commitments listed in its application.

FinCEN estimates that the recordkeeping burden to draft and maintain written confidentiality agreements for personnel granted access to shared information, and to draft and maintain documented policies and procedures to account for any requests or demands for SARs and related information under foreign law, is 20 hours per year. FinCEN estimates that the recordkeeping burden to prepare and submit quarterly reports, to include technical difficulties encountered, legal issues uncovered, the outcome of requests or demands made for SARs shared pursuant to the pilot program, successes or lessons learned, is four hours per report, for a total of 16 hours per year (4 hours × 4 reports per year).

FinCEN estimates one hour for the recordkeeping burden associated with the notice requirement, where a participant institution must notify FinCEN of any requests or demands from foreign law enforcement, foreign regulators, or other outside foreign party for SARs and related information shared with foreign branches, subsidiaries, and affiliates pursuant to the pilot program, and notify FinCEN of the outcome of such request and any further attempts to obtain such SARs and related information. FinCEN also estimates one hour for the burden associated with maintaining records sufficient to identify the specific foreign jurisdictions in which branches, subsidiaries, or affiliates of financial institutions are located and that received any specific SAR or related information.

FinCEN understands that some participant financial institutions may have existing SAR sharing procedures and confidentiality agreements in place that could be leveraged for the pilot program, whereas other institutions may need to create them. For that reason, FinCEN estimates that the proposed rule would add roughly 59 burden hours per participant financial institution a year based on the above calculations.[43]

Estimated Total Annual Reporting Burden: 5,900 hours (100 financial institutions multiplied by 59 hours). This is a new regulatory requirement that requires a new OMB control number. The OMB control number assigned to the recordkeeping and reporting requirements described in this notice is 1506–XXXX. 5,900 hours will be assigned to new OMB control number 1506–XXXX.

Specific Questions for Comment:

(1) FinCEN is requesting comment from financial institutions that anticipate voluntarily participating in the pilot program on whether the estimate of 100 financial institutions that might participate in a pilot program is accurate, so that FinCEN can further refine its estimate of expected participants.

(2) Is FinCEN's burden estimate of 20 hours per year for a financial institution to draft and submit an application reasonable?

(3) Is FinCEN's burden estimate of 20 hours per year for a financial institution to draft and maintain written confidentiality agreements and maintain policies and procedures related to disclosure requests reasonable?

(4) Is FinCEN's burden estimate of 16 hours per year for a financial institution to submit four quarterly reports reasonable?

(5) Is FinCEN's burden estimate of one hour per year for a financial institution to refer law enforcement, regulator, or outside party requests to FinCEN reasonable?

(6) Is FinCEN's burden estimate of one hour per year for a financial institution to maintain records to sufficiently track SARs such that a participant financial institution can identify a specific SAR shared with a specific foreign branch, subsidiary, or affiliate?

(7) How often does an institution receive requests or demands for SARs and related information from law enforcement, a regulator, or other outside party?

General Questions for Comment: In addition to the questions listed above, FinCEN invites comment on: (a) Whether the proposed collection of

[43] FinCEN arrived at the estimate of 58 burden hours by calculating 20 hours (application) + 1 hour (material deviations from the written agreement) + 20 hours (confidentiality agreements) + 16 hours (quarterly reports) + 1 hour (law enforcement referrals) = 58 hours annual per financial institution.

information is necessary for the proper performance of the functions of FinCEN, including whether the information will have practical utility; (b) the accuracy of the estimated burden associated with the proposed collection of information; (c) how the quality, utility, and clarity of the information to be collected may be enhanced; and (d) how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, Banking, Currency, Foreign banking, Foreign currencies, Investigations, Penalties, Reporting and recordkeeping requirements, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, part 1010 of chapter X of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5336; Title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 2006, Pub.L 114–41. Stat. 458–459; sec. 701, Pub. L. 114–74, 129 Stat. 599; sec. 6403, Pub. L. 116–283, 134 Stat. 3388.

■ 2. Add § 1010.240 to subpart B to read as follows:

§ 1010.240 Pilot program authorizing SAR sharing with foreign branches, subsidiaries, and affiliates.

(a) *Definitions.* For purposes of this section, the following terms have the following meanings:

(1) *Eligible financial institution.* The term ''eligible financial institution'' means a financial institution as described in 31 U.S.C. 5312(a)(2) that is obligated to report suspicious activity under 31 U.S.C. 5318(g), including without limitation:

(i) Banks, as defined at 31 CFR 1010.100(d);

(ii) Casinos and card clubs, as defined at 31 CFR 1010.100(t)(5) and (6), respectively;

(iii) Money services businesses, as defined at 31 CFR 1010.100(ff);

(iv) Brokers or dealers in securities, as defined at 31 CFR 1010.100(h);

(v) Mutual funds, as defined at 31 CFR 1010.100(gg);

(vi) Insurance companies, as defined at 31 CFR 1025.100(g);

(vii) Futures commission merchants and introducing brokers in commodities, as defined at 31 CFR 1010.100(x) and (bb), respectively;

(viii) Loan or finance companies, as defined at 31 CFR 1010.100(lll); and

(ix) Housing government sponsored enterprises, as defined at 31 CFR 1010.100(mmm).

(2) *Participant financial institution.* The term ''participant financial institution'' means an eligible financial institution that FinCEN has authorized to engage in the pilot program described in this section, in accordance with the requirements set forth in this section and any other conditions imposed by FinCEN.

(3) *Affiliate.* The term ''affiliate'' means an entity that controls, is controlled by, or is under common control with another entity, including any branch or subsidiary.

(4) *Suspicious activity report (SAR) and related information.* The term ''SAR and related information'' means a report filed pursuant to 31 CFR 1020.320 (banks); 1021.320 (casinos and card clubs); 1022.320 (money services businesses); 1023.320 (brokers or dealers in securities); 1024.320 (mutual funds); 1025.320 (insurance companies); 1026.320 (futures commission merchants and introducing brokers in commodities); 1029.320 (loan or finance companies); 1030.320 (housing government-sponsored enterprises), and any information that would reveal the existence of such a report.

(5) *Commencement date.* The term ''commencement date'' means the date on which a participant financial institution begins sharing SARs and related information with foreign affiliates pursuant to the requirements of the pilot program described in this section, in accordance with the requirements set forth in this section and any other conditions imposed by FinCEN.

(b) *Participation in the SAR pilot program.* Notwithstanding any other provision of this chapter, and subject to the terms and conditions specified in this section or otherwise prescribed by FinCEN, a financial institution approved by FinCEN to participate in the SAR pilot program may share SARs and related information, including the fact that a SAR has been filed, with the institution's foreign affiliates for the purpose of combating illicit finance risks.

(c) *Obligations of a participant financial institution*—(1) *Application.* Eligible financial institutions must obtain approval from FinCEN to participate in the pilot program. To obtain FinCEN approval, an eligible financial institution shall submit a written application to FinCEN. FinCEN will notify the financial institution's relevant Federal functional regulator of the application. FinCEN will share any materials submitted in connection with an application under this section with relevant Federal functional regulators, or, as appropriate, other relevant agencies. The written application must:

(i) Identify the institution's point of contact(s) for pilot program-related correspondence with FinCEN, and, for entities located abroad, appoint agents for service of process in the United States;

(ii) Specify the foreign affiliates with which the financial institution intends to share SARs and related information, including the operational jurisdictions of such entities, as well as whether such entities will be providing reciprocal information to the applicant institution;

(iii) Specify the particular purpose or purposes for which the foreign affiliates intend to use SARs and related information;

(iv) Include an estimated commencement date for the institution's pilot program; and

(v) Provide a description of all internal controls in place to protect the confidentiality of and prevent unauthorized disclosures of SARs and related information and ensure data security and confidentiality of personally identifiable information.

(2) *Internal controls*—(i) *Implementation of internal controls.* A participant financial institution must implement and maintain policies, procedures, and internal controls that are reasonably designed to ensure that its foreign affiliates do not permit unauthorized disclosures of SARs and related information shared pursuant to the pilot program. These controls should include:

(A) Written confidentiality agreements or arrangements specifying that all personnel in foreign affiliates granted access to SARs and related information pursuant to the pilot program must safeguard the confidentiality of SARs and related information shared pursuant to the pilot program, including information indicating that a SAR has been filed;

(B) Provisions for the secure transmission and storage of SARs and related information between the participant financial institution and its foreign affiliates; and

(C) Processes and procedures for personnel located in the United States to review any request from foreign law enforcement, foreign regulators, or an outside foreign party for SARs and related information shared pursuant to the pilot program.

(ii) *Copies of internal controls.* FinCEN may request copies of internal policies and procedures, including confidentiality agreements, designed to ensure compliance with the pilot program. FinCEN may share these documents with relevant Federal functional regulators or other relevant agencies.

(3) *Approval.* In determining whether to approve an application, FinCEN will consider, in its sole discretion, the requirements of Federal and State law enforcement operations; any potential concerns of the intelligence community; appropriate standards and requirements regarding data security and the confidentiality of personally identifiable information, including the adequacy of the financial institution's internal controls; and, any other appropriate factors consistent with the purposes of the Bank Secrecy Act.

(4) *Additional requirements.* As a condition of approving an application, FinCEN may impose additional requirements, including requiring a participant financial institution to adopt additional controls related to its participation in the pilot program. FinCEN may impose additional requirements on a participant financial institution at any time after the application is approved.

(5) *Modification.* A participant financial institution shall not deviate in any material manner from the controls proposed in the application described in paragraph (1) or from any additional requirements imposed by FinCEN, except with FinCEN's written approval.

(6) *Termination.* FinCEN may terminate a financial institution's participation in the pilot program at any time if, in its sole discretion, FinCEN determines that such termination is consistent with the considerations set forth in 31 U.S.C. 5318(g)(8)(A) or for other good cause.

(7) *Pre-commencement notice to FinCEN.* After obtaining approval from FinCEN, a participant financial institution shall provide FinCEN with advance written confirmation of the commencement date of the financial institution's sharing of SARs and related information with its foreign affiliates.

(8) *Quarterly reporting requirement.* A participant financial institution shall submit reports regarding its participation in the pilot program to FinCEN every three months after the commencement date of its pilot program. FinCEN intends to share quarterly reports with relevant Federal functional regulators or other relevant agencies. Quarterly reports shall include information concerning:

(i) Total number of SARs and related information shared;

(ii) The name and jurisdiction of each foreign affiliate that received SARs and related information, its relationship with the participant financial institution, and the intended purposes and uses for which the SAR and related information were shared;

(iii) Any legal and compliance issues related to the financial institution's participation in the pilot program;

(iv) Any technical difficulties and challenges encountered;

(v) Any enhancements to the financial institution's AML/CFT program, including reallocation of resources to higher-priority AML/CFT risks enabled as a result of the financial institution's participation in the pilot program. Financial institutions may consult FinCEN's AML/CFT National Priorities, issued pursuant to section 5318(h)(4)(A) of the BSA, to further describe successes in this area; and

(vi) Lessons learned arising from the financial institution's participation in the pilot program, to include any identified deficiencies.

(9) *Requirement for personnel located in the United States.* A participant financial institution shall maintain appropriate personnel located in the United States to review requests or demands of a foreign affiliate for SARs and related information pursuant to its participation in the pilot program.

(10) *Receipt of information requests, subpoenas, and other requests for SARs and related information.* A participant financial institution shall immediately notify FinCEN of all requests or demands on the participant financial institution or its foreign affiliates for SARs or related information from foreign law enforcement, foreign regulators, or any other outside foreign party. Participant financial institutions and their foreign affiliates shall direct the requesting authority to both contact FinCEN about obtaining the requested SARs or related information, and seek to obtain such records or information through a request to the United States pursuant to a mutual legal assistance treaty or other appropriate mechanism for obtaining records from the United States.

(11) *Unauthorized disclosures.* A participant financial institution must immediately notify FinCEN upon learning of or discovering any unauthorized disclosures of SARs or related information shared pursuant to the pilot program and provide all information to FinCEN relating to such unauthorized disclosure.

(12) *SAR tracking.* A participant financial institution shall maintain records sufficient to identify the specific foreign jurisdictions in which affiliates of financial institutions are located and that received any specific SAR or related information. Such records shall be maintained so as to enable the participant financial institution to readily report this information to FinCEN upon request.

(d) *Prohibition involving certain jurisdictions.* (1) A participant financial institution shall not share SARs or related information with a foreign affiliate located in:

(i) The People's Republic of China;

(ii) The Russian Federation; or

(iii) A jurisdiction that:

(A) Is a state sponsor of terrorism, as determined by the U.S. Department of State;

(B) Is subject to financial and economic sanctions imposed by the Federal Government, *i.e.,* jurisdictions with governments whose property and interests in property in U.S. jurisdictions are blocked pursuant to U.S. sanctions authorities and jurisdictions subject to broad prohibitions on transactions by U.S. persons involving that jurisdiction, such as prohibitions on importing or exporting goods, services, or technology to the jurisdiction or dealing in goods or services originating from the jurisdiction, pursuant to U.S. sanctions authorities;

(C) Has been identified as a primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act (Pub. L. 107–56) or section 9714 of the Combating Russian Money Laundering Act (Pub. L. 116–283); or

(D) The Secretary has determined cannot reasonably protect the security and confidentiality of suspicious activity reports and related information.

(2) The Secretary may make an exception on a case-by-case basis for a financial institution located in jurisdictions listed in paragraphs (c)(1)(i) and (ii) of this section if the Secretary determines that such an exception is in the national security interest of the United States and provides appropriate notification to Congress. A financial institution seeking an exception to share SARs or related information with a foreign affiliate located in jurisdictions listed in paragraphs (c)(1)(i) and (ii) of this section must submit a written request to the Director of FinCEN setting forth its reasons for the exception.

(e) *Treatment of foreign jurisdiction-originated reports.* Information related to a report received by a financial institution from a foreign affiliate with respect to a suspicious transaction relevant to a possible violation of law or

regulation shall be subject to the same confidentiality requirements as reports filed under 31 U.S.C. 5318(g).

(f) *Prohibition on offshoring compliance operations.* Participant financial institutions are prohibited from establishing or maintaining any operation located outside of the United States the primary purpose of which is to ensure compliance with the Bank Secrecy Act as a result of the information sharing granted by this pilot program.

(g) *Duration of the pilot program.* This pilot program shall terminate on January 1, 2024. The Secretary may extend the pilot program for not more than two years upon appropriate notification to Congress pursuant to 31 U.S.C. 5318(g)(8)(B)(iii).

(h) *Prohibition on disclosure.* Except to the extent authorized pursuant to the pilot program or in existing regulations or guidance, no participant financial institution, director, officer, employee, or agent of or for a participant financial institution, and no foreign affiliate of a participant financial institution shall disclose to any person any SAR or related information shared pursuant to the pilot program.

(i) *SAR disclosures by a foreign affiliate.* Civil money penalties and criminal sanctions may be imposed on any foreign affiliate under 31 U.S.C. 5321 and 31 U.S.C. 5322 for any violation of the preceding paragraph (h) of this section, without regard to whether the unauthorized disclosure occurs in the United States. Civil money penalties shall be assessed and collected in the manner provided in 31 U.S.C. 5321(b) and (d).

By the Department of the Treasury.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2022–01331 Filed 1–24–22; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 52

[NPS–WASO–32954; PPWOBSADC0; PPMVSCS1Y.Y00000]

RIN 1024–AE47

Visitor Experience Improvements Authority Contracts

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Visitor Experience Improvements Authority given to the National Park Service by Congress in Title VII of the National Park Service Centennial Act. This authority allows the National Park Service to award and administer commercial services contracts and related professional services contracts for the operation and expansion of commercial visitor facilities and visitor services programs in units of the National Park System.

DATES: Comments must be received by March 28, 2022.

Information Collection Requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by March 28, 2022.

ADDRESSES: You may submit your comments, identified by Regulation Identifier Number (RIN) 1024–AE47, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail to:* Commercial Services Program, National Park Service, 1849 C Street NW, Mail Stop 2410, Attn: VEIA Rule Comments, Washington, DC 20240.

Instructions: All submissions received must include the words ''National Park Service'' or ''NPS'' and the RIN (1024–AE47) for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. The NPS will not accept bulk comments in any format (hard copy or electronic) submitted on behalf of others.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–AE47'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Kurt Rausch, Acting Chief of Commercial Services Program, National Park Service; (202) 513–7202; *kurt_rausch@nps.gov.* Questions regarding the NPS's information collection request may be submitted to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–AE47'' in the subject line of your email request.

SUPPLEMENTARY INFORMATION:

Background

NPS Authorities To Contract for Commercial Visitor Services

The National Park Service (NPS) enters into concession contracts with other entities to provide commercial visitor services in over 100 units of the National Park System. Examples of such services include lodging, food, retail, marinas, transportation, and recreation. NPS concession contracts generate approximately $1.6 billion per year in gross receipts, while returning approximately $133 million in franchise fees to the NPS. What was commonly known as the National Park Service Concession Policies Act of 1965 (1965 Act), Public Law 89–249, provided the first comprehensive statutory authority for the NPS to issue concession contracts. Since the repeal of the 1965 Act, concession contracts have been awarded under the Concessions Management Improvement Act of 1998 (1998 Act), 54 U.S.C. 101901–101926. NPS regulations in 36 CFR part 51 govern the solicitation and award of concession contracts issued under the 1998 Act and the administration of concession contracts issued under the 1965 and 1998 Acts.

The National Park Service Centennial Act (Centennial Act), 54 U.S.C. 101931–101938, established the Visitor Experience Improvements Authority (VEIA) allowing the NPS to solicit, award, and administer commercial services contracts for the improvement, modernization, and expansion of commercial visitor facilities and visitor services programs in units of the National Park System. The VEIA supplements but does not replace the existing authority granted to the NPS in the 1998 Act to enter into concession contracts or any other existing NPS authorities to provide commercial visitor services in units of the National Park System. The VEIA is also separate from authorities granted under the Office of Federal Procurement Policy Act and Federal Acquisition Regulations.

Differences Between VEIA and Concessions

The VEIA is intended to provide additional tools to expand, modernize, and improve the condition of commercial facilities and visitor services using contracting models that differ from and are in addition to the concession contracts used under the 1998 Act. These models include management agreements and percentage lease agreements (hereinafter referred to as percentage agreements) found in the private hospitality industry, as well as other contract models that are consistent with the VEIA. These models may be used to provide a variety of commercial visitor services such as lodging, food, retail, marinas, transportation, camping and recreation. The use of industry-standard models may allow and encourage additional companies to bid on new hospitality business opportunities in parks. The VEIA also provides flexibility in the solicitation process. For example, the 1998 Act requires the NPS to consider specific evaluation factors, while the VEIA does not dictate such criteria. This flexibility may allow businesses to more effectively respond to and be evaluated on how they will meet visitor needs for the services being offered. The flexibility of the VEIA also provides the potential to streamline the solicitation process to reduce the burden on businesses submitting proposals, including the ability to negotiate on the terms of the contract and greater ability to modify or adjust operations under existing contracts to reflect changes at the park or different visitor expectations during the contract term. Finally, there are differences in the revenue management and fee structure for contract models that may be used under the VEIA. Under a management agreement, the NPS would pay the operator a base fee plus an incentive fee. The incentive fee would be paid when the operator meets facility maintenance, operating, and visitor service goals. All other revenue would go to the NPS to directly fund operations and improvements. Any increased financial return to the NPS would be used to fund updates to real and personal property and provide commercial visitor services. Under a percentage agreement, the operator would retain the revenue and pay a fee to the NPS. This would be similar to the concession contract model, although the fee structure under a percentage agreement would include payment of a base fee plus a percentage of revenue.

In addition to commercial services contracts, the VEIA authorizes the NPS to enter into professional services contracts related to those commercial services contracts. These may include consulting contracts with hospitality and asset management experts for services such as developing requests for proposals, condition assessments, and operational and financial analysis.

Implementation of the VEIA

The Centennial Act requires the NPS to promulgate regulations appropriate for implementation of the VEIA. 54 U.S.C. 101936. The Centennial Act also states that the VEIA expires seven years after the enactment of the law. 54 U.S.C. 101938. The NPS has consulted with hospitality industry experts, including academic leaders, hospitality asset management companies, hotel owners and operators, and state agencies to assess current visitor service contract models and best practices in the hospitality industry. The NPS engaged a nationally recognized hospitality management consulting and asset management firm to assist the NPS with developing contracts, requests for qualifications and proposals, and solicitation, contract management, and accounting practices.

The NPS learned that hospitality and other industry-standard practices for commercial services contracts, like those authorized in VEIA, typically include the use of a private bank account to hold the owner's funds for expenditure by the operator. To be consistent with applicable fiscal law, however, the NPS will not deposit Federal funds into a private bank account when implementing VEIA. The proposed rule contains alternative funding guidelines to mimic the benefits afforded the industry-standard commercial services contracts as VEIA intended, while still complying with applicable fiscal law.

The NPS has evaluated certain visitor services currently provided under concession contracts that may be suitable for VEIA commercial services contracts.

The NPS will provide information about the VEIA on the website for the NPS Commercial Services Program at *https://www.nps.gov/orgs/csp/index.htm.*

Proposed Rule

The proposed rule includes requirements and limitations applicable to the VEIA that are directed by the Centennial Act. These requirements and limitations would be promulgated in a new part 52 of title 36 CFR. They are explained below.

The NPS may only issue a commercial services contract under the VEIA if the Secretary of the Interior, in this proposed rule acting through the NPS, determines that the contract will expand, modernize, and improve the condition of commercial visitor facilities and the services provided to visitors. Commercial services contracts issued by the NPS under the VEIA must meet two additional criteria. First, the contract must be necessary and appropriate for public use and enjoyment of the National Park System unit where it is located. Second, the contract must be consistent with the preservation and conservation of the resources and values of the unit. These two criteria also must be met for concession contracts.

The NPS may not award contracts under the VEIA for the provision of certain outfitter and guide services, or to authorize the provision of facilities or services for which the Secretary, in this proposed rule acting through the NPS, has granted an existing concessioner a preferential right of renewal under the 1998 Act. The NPS may award contracts under the VEIA without regard to Federal laws and regulations governing procurement by Federal agencies, except for those laws and regulations related to Federal Government contracts that govern working conditions and wage rates and any civil rights provisions otherwise applicable thereto.

The NPS must award VEIA commercial services contracts through a competitive selection process, and must publicly solicit proposals for each commercial services contract before awarding such contract. The NPS must prepare a request for proposals and publish notice of its availability. The NPS may not award a commercial services contract under the VEIA for a term greater than 10 years. The person or entity awarded a contract under the VEIA will not receive leasehold surrender interest in capital improvements (as those terms are defined by the 1998 Act at 54 U.S.C. 101915) constructed under the terms of the contract.

Other than these basic requirements, the VEIA authorized the NPS to design a flexible process for the solicitation and evaluation of proposals. The NPS plans to adjust this process for solicitation and evaluation of proposals to reflect hospitality and other industry practices, accounting for any necessary NPS-specific conditions. In addition to the statutory requirements governing the VEIA, the proposed rule includes defined terms and other provisions that will govern the administration of contracts under the VEIA. These provisions explain solicitation, selection, and award procedures,

including information about how the Director will publicly solicit proposals for a commercial services contract and how the Director will evaluate proposals. Other provisions govern the terms of the contracts themselves, including provisions related to termination, rate approval, assignments of contracts, and general funds management. The proposed rule also addresses access to information and records held by operators related to their performance under commercial services contracts and by contractors related to their performance under professional services contracts.

Opportunity To Comment

The NPS is interested in receiving comments from the public on both the proposed rule and the use of the VEIA. In particular, the NPS is interested in responses to the following questions:

(1) Does the bid process outlined in the proposed rule provide sufficient flexibility to allow bidders to suggest new services not anticipated by the NPS?

(2) Does the bid process outlined in the proposed rule provide sufficient opportunity to negotiate contract terms?

(3) What other best practices in hospitality contract models or bid processes might the NPS adopt to achieve the goals of expanding, modernizing and improving visitor services and the condition of commercial facilities?

(4) Where does the NPS need to expand, modernize and improve the condition of commercial facilities and visitor services?

(5) How should the NPS use the VEIA to improve the visitor experience?

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant at the proposed rule stage and will make a separate significance determination at the final rule stage.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This proposed rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and initial regulatory flexibility analyses found in the report entitled ''Visitor Experience Improvements Authority (VEIA) Proposed Rule Regulatory Assessment (RA) and Initial Regulatory Flexibility Analysis (IRFA)'' which can be viewed in the docket for this rulemaking.

Congressional Review Act (CRA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the CRA. This proposed rule:

(a) Would not have an annual effect on the economy of $100 million or more;

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This proposed rule clarifies NPS procedures and does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This proposed rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. This proposed rule:

(a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175, and has determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.)

This proposed rule contains new information collections. All information collections require approval under the Paperwork Reduction Act (PRA) of 1995. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB must approve the new reporting and recordkeeping requirements identified below:

(1) Solicitation of Proposals—The VEIA requires that the NPS solicit proposals for commercial services contracts through a competitive process. The NPS may also award and administer related professional services contracts. The solicitation process may include one or more phases such as a request for qualifications followed by or

in concert with a request for more detailed information through a request for proposals. The process could also include interviews with respondents and a negotiation phase. The NPS will use the information collected to evaluate and select the best operator to provide the contracted services. Information submitted in response to a solicitation may include, as applicable to the specific project, types of information similar to the following:

- Information concerning the respondent's ability to comply with the commercial service contract terms and conditions;
- Information that demonstrates that the respondent is a qualified entity;
- Information that demonstrates the respondent's experience and prior performance in operating similar facilities and providing similar services;
- Information concerning the respondent's financial capability;
- Information concerning the respondent's proposed approach and methodology to deliver the services specified; and
- Information that the respondent provides in response to other factors identified in the request for proposals.

(2) Reporting Requirements

(A) Commercial Services Operators—In order to monitor their performance and make appropriate NPS management decisions, the NPS will require operators providing commercial services under a VEIA contract to provide information to the NPS through reports and plans such as the following:

- Annual Plan that includes information summarizing prior year operating activities, capital projects and facility condition assessment, and financial performance, and outlining projected annual operating and capital budgets, projected annual operating plans, capital project plans and designs, and staffing and marketing plans;
- Monthly Performance Reports that include monthly financial performance statements, capital project and operating performance information; and
- Ad hoc Reports such as environmental or safety incidents reports.

The above types of plans and reports to owners (*e.g.,* NPS) are standard for those providing commercial services in the hospitality industry in the private and public sector. The NPS requires financial data be submitted in accordance with Generally Accepted Accounting Principles (GAAP); however, no standardized form or format is defined for any plans or reports at this time. The NPS expects this to evolve over the remaining years of the VEIA and may have forms and formats at a later time. The NPS will obtain OMB approval for any changes in reporting and/or recordkeeping requirements as they are developed.

(B) Professional Services Providers—Professional services providers will be required to provide information to the NPS through deliverables, reports and plans such as the following:

- Operators Annual Plan Review Report analyzing operator prior year performance and operational, capital project and financial plans for the upcoming year;
- Monthly Asset Manager Reports analyzing operator operational, capital project and financial performance; and
- Commercial Services Contract Solicitation Support Deliverables such as financial and business opportunity analysis reports, condition assessment reports, and draft Request for Qualifications/Request for Proposals documents for commercial services contracts.

There is no standard format or form associated with these information requests.

(3) Recordkeeping Requirements—Operators under commercial services contracts and contractors under professional services contracts must keep any records that the Director of the NPS may require for the term of the contract and for five calendar years after the termination or expiration of the contract to enable the Director to determine that all terms of the contract are or were faithfully performed. The Director, for the purpose of audit and examination, must have access to and the right to examine all pertinent records, books, documents, and papers of the operator, contractor, subcontractor, and any parent or affiliate of the operator or contractor (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or contractor).

Title of Collection: Administration of Visitor Experience Improvements Authority, 54 U.S.C. 101936.

OMB Control Number: 1024–New.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Business entities desiring to enter VEIA-authorized contracts with the National Park Service.

Total Estimated Number of Annual Respondents: 46 (Commercial Services Operators: 18; Professional Services Providers: 28).

Total Estimated Number of Annual Responses: 100 (Commercial Services Operators: 50; Professional Services Providers: 50).

Estimated Completion Time per Response: Average time (Varies from 24 hours to 800 hours, depending on respondent and/or activity).

Total Estimated Number of Annual Burden Hours: 7,016 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $112,900 (for costs associated with solicitations, start-up costs, and recordkeeping requirements).

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–AE47'' in the subject line of your comments.

National Environmental Policy Act (NEPA)

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required. The NPS has determined the proposed rule is categorically excluded under 43 CFR 46.210(i) because it is

administrative, financial, legal, and technical in nature. In addition, the environmental effects of this proposed rule are too speculative to lend themselves to meaningful analysis. NPS decisions to enter into contracts under the VEIA will be subject to compliance with NEPA at the time the contracts are executed. The NPS has determined the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211; this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and this rule has not otherwise been designated by the Administrator of OIRA as a significant energy action. A Statement of Energy Effects is not required.

Clarity of This Proposed Rule

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)) and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

(a) Have logical organization;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Have short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe that the NPS has not met these requirements, send comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the proposed rule, your comments should specifically identify where the NPS could improve. For example, you should tell the NPS the numbers of the sections or paragraphs you find unclear, which sections or sentences are too long, the sections where you would find lists or tables useful, etc.

List of Subjects in 36 CFR Part 52

Commercial services, Government contracts, National parks, Visitor services.

In consideration of the foregoing, the National Park Service proposes to add part 52 to title 36 of the Code of Federal Regulations to read as follows:

PART 52—VISITOR EXPERIENCE IMPROVEMENTS AUTHORITY CONTRACTS

Subpart A—Authority and Purpose

Sec.

52.1 What does this part cover?
52.2 What is the purpose of a commercial services contract?
52.3 How are terms defined in this part?
52.4 What types of commercial services contracts may the Director issue?
52.5 What types of professional services contracts may the Director issue?

Subpart B—Solicitation, Selection, and Award Procedures

52.10 How will the Director solicit responses for the award of a commercial services contract?
52.11 Where will the Director publish notice of the availability of a request for proposals?
52.12 How long will respondents have to submit a response?
52.13 How will the Director share information with potential respondents after issuing the request for proposals?
52.14 How will the Director evaluate responses and select the best one?
52.15 When will the Director reject a response?
52.16 What options does the Director have in accepting or rejecting a response?
52.17 Does this part limit the authority of the Director?
52.18 When must the selected respondent execute the contract?
52.19 When may the Director award the commercial services contract?
52.20 How will the Director solicit and award professional services contracts?

Subpart C—Contract Provisions

52.25 What is the term of a commercial services contract?
52.26 When may the Director terminate a contract?
52.27 May an operator or professional services provider receive leasehold surrender interest in capital improvements?
52.28 Are operator rates subject to approval by the Director?
52.29 May operators assign or encumber commercial services contracts?
52.30 How may commercial services contracts be funded?

Subpart D—Information and Access to Information

52.35 What records must the operator and professional services provider keep and what access does the Director have to records?
52.36 What access does the Comptroller General have to records kept by operators and professional services providers?

Subpart E—Miscellaneous

52.40 Does this part affect concession contracts under part 51 of this chapter?
52.41 Does the VEIA expire?
52.42 Severability.

Authority: 54 U.S.C. 101931–101938.

Subpart A—Authority and Purpose

§ 52.1 What does this part cover?

This part covers the solicitation, award, and administration of commercial services contracts and related professional services contracts. The Director solicits, awards, and administers these contracts on behalf of the Secretary of the Department of the Interior under the authority of the Act of August 25, 1916, as amended and supplemented, 54 U.S.C. 100101 *et seq.,* and Title VII of the National Park Service Centennial Act, 54 U.S.C. 101931–101938. All commercial services contracts and related professional services contracts must be consistent with the requirements of this part. These contracts will contain such terms and conditions as required by this part or law and as otherwise appropriate in furtherance of the purposes of this part and the Visitor Experience Improvements Authority (VEIA).

§ 52.2 What is the purpose of a commercial services contract?

The National Park Service (NPS) will use commercial services contracts to expand, modernize, and improve the condition of commercial facilities and commercial services provided to visitors in a park area. Commercial services contracts are limited to those that are necessary and appropriate for public use and enjoyment of the park area in which they are located and consistent with the preservation and conservation of the resources and values of the park area.

§ 52.3 How are terms defined in this part?

Award occurs when the Director and a selected respondent execute a commercial services contract or related professional services contract that creates legally binding obligations on the parties to the contract.

Commercial services contract means a binding written agreement between the Director and an operator awarded under the authority of this part that authorizes the operator to provide services to visitors within a park area under specified terms and conditions.

Contract means either a commercial services contract or a related professional services contract issued under the authority of this part. The Director may award contracts without regard to Federal laws and regulations governing procurement by Federal agencies, with the exception of laws and regulations related to Federal Government contracts governing working conditions and wage rates, including the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*), 40 U.S.C. 3141–3144, 3146, and

3147 (commonly known as the ''Davis-Bacon Act''), and any civil rights provisions otherwise applicable thereto. Contracts as defined in this section are not contracts within the meaning of 41 U.S.C. 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations, or policies that apply only to Federal service contracts or other types of Federal procurement actions.

Director means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part.

Operator means an individual, corporation, or other legally recognized entity that duly holds a commercial services contract.

Professional services contract means a binding written agreement between the Director and a professional service provider awarded under the authority of this part that authorizes the service provider to provide hospitality consulting or other services to the National Park Service related to commercial services contracts.

Professional services provider means an individual, corporation, or other legally recognized entity that duly holds a professional services contract.

Qualified entity means an individual, corporation, or other legally recognized entity that the Director determines has the experience and financial ability to carry out the terms of a commercial services contract or professional services contract.

Respondent means an individual, corporation, or other legally recognized entity, that submits a response for a commercial services contract.

Response means the information an individual, corporation, or other legally recognized entity provides to the National Park Service in response to a request for proposals.

VEIA means the authority granted to the Director under Title VII of Public Law 114–289 entitled ''Visitor Experience Improvements Authority'' and codified at 54 U.S.C. 101931–101938.

Visitor services means accommodations, facilities, and other services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by an individual or entity other than the Director. Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

§ 52.4 What types of commercial services contracts may the Director issue?

The Director may issue commercial services contracts for expanding, modernizing, and improving visitor services consistent with the VEIA. Examples of such contracts include, without limitation, management agreements and visitor services percentage lease agreements (referred to as ''percentage agreements'' for purposes of this part).

§ 52.5 What types of professional services contracts may the Director issue?

The Director may issue professional services contracts that support the National Park Service in soliciting, executing, and managing commercial services contracts. Professional services contracts may include asset management agreements under which a service provider assists the National Park Service in overseeing and administering commercial services contracts but does not itself provide visitor services. Professional services contracts also may include contracts for the provision of other consulting services to the National Park Service such as developing requests for proposals, condition assessments, operational or financial analysis, accounting, and other related services.

Subpart B—Solicitation, Selection, and Award Procedures

§ 52.10 How will the Director solicit responses for the award of a commercial services contract?

(a) The Director will award commercial services contracts through a competitive selection process. The Director will issue a request for proposals inviting responses for consideration by the Director. The request for proposals will describe the terms and conditions of the proposed commercial services contract and the procedures the Director will follow to negotiate and award the commercial services contract.

(b) The terms and conditions of the request for proposals and the proposed commercial services contract are not final until the Director awards the commercial services contract.

(c) The solicitation process may include one or more phases, such as a request for qualifications followed by or in concert with a request for more detailed information through a request for proposals. The process could also include interviews with respondents and a negotiation phase.

(d) If the entity that will become the operator is not established at the time of submission of a response, the response must contain assurances satisfactory to the Director that the entity that will become the operator will be a qualified entity as of the date of the award of the commercial services contract and otherwise have the ability to carry out the commitments made in the response.

§ 52.11 Where will the Director publish notice of the availability of a request for proposals?

(a) The Director will publish notice of the availability of the request for proposals at least once in the System for Award Management (SAM) where Federal business opportunities are electronically posted or in a similar publication if SAM is no longer used. The Director may also publish notices electronically on websites, including social media, and in local or national newspapers or trade magazines.

(b) The Director will make the request for proposals available upon request to all interested persons. The Director may charge a reasonable fee for a printed request for proposals.

§ 52.12 How long will respondents have to submit a response?

The Director will define the process and the timeline for responding and entering into negotiations in the request for proposals. The Director will not consider untimely responses.

§ 52.13 How will the Director share information with potential respondents after issuing the request for proposals?

If the Director shares material information directly related to the request for proposals with one potential respondent, the Director will share the same information with all potential respondents who have advised the Director of their interest in the request for proposals. This does not apply to publicly available information.

§ 52.14 How will the Director evaluate responses and select the best one?

(a) The Director will apply the selection factors set forth in the request for proposals. The evaluation will include an assessment of the respondent's written submittals in response to the request for proposals and may also include information presented by the respondent during request for qualifications, interview, and negotiation phases. During this process, the Director may request written clarifications from any respondent that has submitted a timely response.

(b) The Director will use selection factors to evaluate responses that include compliance with the

requirements in the request for proposals, ability to comply with the terms and conditions of the commercial services contract, a demonstration that the respondent is a qualified entity, demonstrated experience and prior performance in operating similar facilities and providing similar services, financial capability, and the proposed approach and methodology to deliver the services specified. The Director may include other factors that are identified in the request for proposals.

(c) The Director must determine that the commercial services contract issued to the selected respondent will meet the objectives of expanding, modernizing, and improving the condition of commercial facilities and commercial services provided to visitors in the park area.

§ 52.15 When will the Director reject a response?

The Director will reject any response if the Director makes any of the following determinations:

(a) The respondent is not a qualified entity.

(b) The response is not responsive to the requirements in the request for proposals. A response is not responsive if the Director determines that it is not timely, does not meet the minimum requirements of the proposed contract, or does not provide the information required by the request for proposals.

§ 52.16 What options does the Director have in accepting or rejecting a response?

(a) If no responsive responses are submitted, the Director may cancel the solicitation. After cancellation, the Director may establish new commercial services contract requirements and issue a new request for proposals.

(b) The Director reserves the right to accept or reject any or all responses received as a result of the solicitation, to waive minor irregularities, or to negotiate with any respondent, in any manner necessary, to serve the best interests of the National Park Service.

(c) No respondent or other person or entity will obtain compensable or other legal rights as a result of an amended, extended, canceled, or resolicited request for proposals for a contract.

§ 52.17 Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a contract, to cancel a solicitation, or to terminate a contract in accordance with its terms.

§ 52.18 When must the selected respondent execute the contract?

The selected respondent must execute the contract within the time period established by the Director. If the selected respondent fails to execute the contract in this period, the Director may select another responsive response and enter into negotiations with that respondent, or may cancel the solicitation and choose to resolicit the contract.

§ 52.19 When may the Director award the commercial services contract?

The Director may award a commercial services contract at any time after selecting the best response, the conclusion of negotiations, and execution of the contract by the respondent.

§ 52.20 How will the Director solicit and award professional services contracts?

The Director will advertise opportunities for professional services contracts at least once in the System for Award Management (SAM) where Federal business opportunities are electronically posted or in a similar publication if SAM is no longer used. The Director may also publish notices electronically on websites, including social media, and in local or national newspapers or trade magazines. The Director will evaluate and select professional services providers that are qualified entities following the procedures described in the advertised opportunity.

Subpart C—Contract Provisions

§ 52.25 What is the term of a commercial services contract?

A commercial services contract will generally be awarded for a set term or for a base term plus option years, with the total term not to exceed 10 years.

§ 52.26 When may the Director terminate a contract?

Contracts will contain appropriate provisions for suspension of operations and for termination by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the VEIA.

§ 52.27 May an operator or professional services provider receive leasehold surrender interest in capital improvements?

No. Operators and professional services providers will not receive leasehold surrender interest in capital improvements, as those terms are defined at 54 U.S.C. 101915.

§ 52.28 Are operator rates subject to approval by the Director?

(a) The Director may require prior approval of rates for services provided to visitors under a commercial services contract.

(b) Generally, the Director will approve rates for services provided to visitors based upon market demand, although the Director may specify rates or rate methods for particular services based on factors other than market demand, such as to ensure affordability to a broad segment of visitors.

§ 52.29 May operators assign or encumber commercial services contracts?

Commercial services contracts will include provisions that require the Director's approval prior to any assignment or encumbrance of the contract or any rights or interests under the contract to another operator.

§ 52.30 How may commercial services contracts be funded?

(a) Commercial services contracts may use either of the following two funding structures:

(1) Contract funds will be maintained in a Federal account and operators will be provided ready access to those funds to pay for agreed-upon expenses; or

(2) Contract funds will be provided to the operators, who will be solely responsible for maintaining and expending the funds on agreed-upon expenses.

(b) Commercial services contracts will clearly define what contract-related funds shall be considered revenue collected for the NPS and will provide for the periodic remittance of such funds to the NPS.

Subpart D—Information and Access to Information

§ 52.35 What records must the operator and professional services provider keep and what access does the Director have to records?

Operators and professional services providers must keep any records that the Director may require for the term of the contract and for five calendar years after the termination or expiration of the contract to enable the Director to determine that all terms of the contract are or were faithfully performed. The Director, or an authorized representative of the Director, may access and examine all pertinent records, books, documents, and papers of the operator, professional services provider, and any subcontractor, parent, or affiliate of the operator or professional services provider (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and

performance of any representations or commitments made to the Director by a parent or affiliate of the operator or professional services provider).

§ 52.36 What access does the Comptroller General have to records kept by operators and professional services providers?

The Comptroller General of the National Park Service, or an authorized representative of the Comptroller General, may access and examine all pertinent records, books, documents, and papers of the operator, professional services provider, and any subcontractor, parent, or affiliate of the operator or professional services provider (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the operator or professional services provider) going back five years from the closing date of the last fiscal year of the operator or professional service provider.

Subpart E—Miscellaneous

§ 52.40 Does this part affect concession contracts under part 51 of this chapter?

No, nothing in this part modifies the terms or conditions of any existing concession contract or the ability of the Director to enter into concession contracts under part 51 of this chapter. The 1998 Act (as that term is defined in part 51 of this chapter) remains in effect.

§ 52.41 Does the VEIA expire?

Yes. The Director may not award a contract under the VEIA after December 16, 2023.

§ 52.42 Severability.

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–01254 Filed 1–24–22; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0846; FRL–9304–01–R9]

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) from flares. We are proposing to approve these local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before February 24, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0846 at *https://www.regulations.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.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA 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://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4129 or by email at *sherman.donnique@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted or amended by the local air agencies and submitted by the California Air Resources Board (CARB) to the EPA.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted/amended	Submitted
SCAQMD	1118.1	Control of Emissions from Non-Refinery Flares	01/04/2019	04/24/2019
SJVUAPCD	4311	Flares	12/17/2020	03/12/2021

Under CAA section 110(k)(1), the EPA must determine whether a SIP submittal meets the minimum completeness criteria established in 40 CFR part 51, appendix V for an official SIP submittal on which the EPA is obligated to take action. If the EPA does not make an affirmative determination of completeness or incompleteness within six months of receipt of a SIP submittal, the submittal is deemed to be complete by operation of law. The submitted rules listed in Table 1 were deemed complete by operation of law on the following dates: October 24, 2019 (SCAQMD Rule

1118.1), and September 12, 2021 (SJVUAPCD Rule 4311).

B. Are there other versions of these rules?

There are no previous versions of SCAQMD Rule 1118.1 in the SIP. SCAQMD locally adopted this rule on January 4, 2019, and CARB submitted it to us on April 24, 2019.

We approved an earlier version of SJVUAPCD Rule 4311 into the SIP on November 3, 2011 (76 FR 68106). The SJVUAPCD adopted revisions to the SIP-approved version on December 17, 2020, and CARB submitted them to us on March 12, 2021. If we take final action to approve the December 17, 2020 version of Rule 4311, this version will replace the previously approved version of this rule in the SIP.

C. What is the purpose of the submitted rule revisions?

Emissions of NO_X and VOCs contribute to the production of ground-level ozone, which harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. The submitted rules set further requirements to control NO_X and other emissions from flares. A description of these rules follows, and a more complete list of revisions and rule discussion can be found in the technical support documents (TSDs) and submitted district staff reports and rules for this rulemaking:

- SCAQMD Rule 1118.1 was adopted to fulfill reasonably available control technology (RACT) requirements for non-refinery flares and to facilitate the transition of the NO_X RECLAIM (Regional Clean Air Incentives Market) program to a command-and-control regulatory structure. Rule 1118.1 is designed to reduce NO_X and VOC emissions from non-refinery flares. The proposed rule establishes capacity thresholds for existing flares and emission limits for NO_X, VOC, and carbon monoxide (CO) for new, replaced, or relocated non-refinery flares.
- SJVUAPCD amended Rule 4311 to fulfill SJVUAPCD's control measure commitments in their 2018 $PM_{2.5}$ Plan and their 2016 Ozone Plan, for reducing flare emissions. SJVUAPCD amended Rule 4311 to require owners and operators of flares to install Ultra Low NO_X (ULN) flaring technologies and to encourage alternative uses of waste gas. Some of the revisions include establishing annual throughput thresholds that flares must not exceed, and adding a compliance schedule for meeting annual throughput limits.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each major source of NO_X in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). The SCAQMD and SJVUAPCD regulate ozone nonattainment areas classified as Extreme for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS), and the 2015 8-hour ozone NAAQS (40 CFR 81.305). Therefore, these rules must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Do the rules meet the evaluation criteria?

These rules meet CAA requirements and are consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The TSDs have more information on our evaluation.

C. The EPA's Recommendations To Further Improve the Rules

The TSDs include recommendations for the next time the local agencies modify their rules.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because they fulfill all relevant requirements. We will accept comments from the public on this proposal until February 24, 2022. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SCAQMD rule and the SJVUAPCD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 the 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

(Authority: 42 U.S.C. 7401 *et seq.*)

Dated: January 11, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–00810 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 171

[EPA–HQ–OPP–2021–0831; FRL–9134.1–02–OCSPP]

RIN 2070–AL01

Notification of Submission to the Secretary of Agriculture; Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretary of Agriculture.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) a draft proposed rulemaking regulatory document concerning ''Pesticides; Certification of Pesticide Applicators; Further Extension to Expiration Date of Certification Plans (RIN 2070–AL01).'' The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: See Unit I. under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0831, is available at *https://www.regulations.gov.* That docket contains historical information and this **Federal Register** document; it does not contain the draft proposed rule.

Please note that due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Carolyn Schroeder, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–2376; email address: *schroeder.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

FIFRA section 25(a)(2)(A) requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft proposed rule at least 60 days before signing it in proposed form for publication in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If the Secretary of USDA comments in writing regarding the draft proposed rule within 30 days after receiving it, then the EPA Administrator shall include the comments of the Secretary of USDA and the EPA Administrator's response to those comments with the proposed rule that publishes in the **Federal Register**. If the Secretary of USDA does not comment in writing within 30 days after receiving the draft proposed rule, then the EPA Administrator may sign the proposed rule for publication in the **Federal Register** any time after the 30-day period.

II. Do any statutory and Executive Order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in Part 171

Environmental protection, Applicator competency, Agricultural worker safety, Certified applicator, Pesticide safety training, Pesticide worker safety, Pesticides and pests, Restricted use pesticides.

Dated: January 19, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–01289 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R04–UST–2020–0696; FRL: 9057–01–R4]

Commonwealth of Kentucky: Codification and Incorporation by Reference of Approved State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976 (RCRA), as amended, authorizes the Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank (UST) programs in lieu of the Federal program. The Commonwealth of Kentucky (Commonwealth or State) applied to the EPA for final approval to its UST Program on October 7, 2019, and on September 16, 2020, the EPA published a final determination and approval of the Commonwealth's UST Program. This action proposes to codify the EPA's prior approval of the Commonwealth's UST Program and to incorporate by reference approved provisions of the Commonwealth's statutes and regulations.

DATES: Comments on this proposed rule must be received on or before February 24, 2022.

ADDRESSES: Comments may be submitted by one of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov* (our

preferred method). Follow the online instructions for submitting comments.

• *Email: singh.ben@epa.gov.* Include the Docket ID No. EPA–R04–UST–2020–0696 in the subject line of the message.

Instructions: Submit your comments, identified by Docket ID No. EPA–R04–UST–2020–0696, via the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit: *https://www.epa.gov/dockets/commenting-epa-dockets.*

Out of an abundance of caution for members of the public and our staff, the public's access to the EPA Region 4 Offices is by appointment only to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov* or via email. The EPA encourages electronic comment submittals, but if you are unable to submit electronically or need other assistance, please contact Ben Singh, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. The index to the docket for this action is available electronically at *https://www.regulations.gov.* The documents that form the basis of this codification and associated publicly available docket materials are available for review on the *https://www.regulations.gov* website. The EPA encourages electronic reviewing of these documents, but if you are unable to review these documents electronically, please contact Ben Singh to schedule an appointment to view the documents at the Region 4 Offices. Interested persons wanting to examine these documents should make an appointment at least two weeks in advance. The EPA Region 4 requires all visitors to adhere to the COVID–19 protocol. Please contact Ben Singh for the COVID–19 protocol requirements prior to your appointment.

Please also contact Ben Singh if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you. For further information on the EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Ben Singh, RCRA Programs and Cleanup Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; Phone number: (404) 562–8922, email address: *singh.ben@epa.gov.* Please contact Ben Singh by phone or email for further information.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 282

Administrative practice and procedure, Environmental protection, Hazardous substances, Incorporation by reference, Petroleum, Reporting and recordkeeping requirements, State program approval, and Underground storage tanks.

Authority: This action is issued under the authority of sections 2002(a), 7004(b), 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), 6991c, 6991d, and 6991e.

Dated: January 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–01297 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0069; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BG01

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Sacramento Mountains Checkerspot Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*), a butterfly from New Mexico, as an endangered species under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the Sacramento Mountains checkerspot butterfly as an endangered species under the Act. If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. We find that the designation of critical habitat for the Sacramento Mountains checkerspot butterfly is not determinable at this time.

DATES: We will accept comments received or postmarked on or before March 28, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by March 11, 2022.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the docket number or RIN for this rulemaking (presented above in the document headings). For best results, do not copy and paste either number; instead, type the docket number or RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this

document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2021–0069, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

FOR FURTHER INFORMATION CONTACT: Shawn Sartorius, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113; telephone 505–346–2525. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species warrants listing, we are required to promptly publish a proposal in the **Federal Register**, unless doing so is precluded by higher-priority actions and expeditious progress is being made to add and remove qualified species to or from the List of Endangered and Threatened Wildlife and Plants. The Service will make a determination on our proposal within 1 year. If there is substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the proposed listing, we may extend the final determination for not more than six months. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can be completed only by issuing a rule.

What this document does. We propose to list the Sacramento Mountains checkerspot butterfly as an endangered species under the Act. As explained later in this document, we conclude that the designation of critical habitat for the Sacramento Mountains checkerspot butterfly is not determinable at this time.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Sacramento Mountains checkerspot butterfly is primarily threatened by overgrazing by large ungulates, recreation, climate change, nonnative plants, and an altered wildfire regime.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is threatened instead of

endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On January 28, 1999, we received a petition from the Southwest Center for Biological Diversity (now Center for Biological Diversity (CBD)) requesting emergency listing of the Sacramento Mountains checkerspot butterfly as endangered with critical habitat. On December 27, 1999, we published a 90-day finding that the petition presented substantial information that listing may be warranted, but that emergency listing was not warranted (64 FR 72300).

On September 6, 2001, we published a 12-month finding and proposed rule to list the Sacramento Mountains checkerspot butterfly as endangered with critical habitat (66 FR 46575). On December 21, 2004, we published a withdrawal of the proposed rule (69 FR 76428), concluding that the threats to the species were not as great as we had perceived when we proposed it for listing.

On July 5, 2007, we received another petition from Forest Guardians (now WildEarth Guardians) and CBD to list the Sacramento Mountains checkerspot butterfly under the Act due to ongoing threats, such as cattle and feral horse grazing, noxious weeds, collection, and climate change, and an imminent plan to spray for insect pests. On December 5, 2008, we published a 90-day finding that the petition presented substantial information that listing may be warranted (73 FR 74123). On September 2, 2009, we published a 12-month finding that listing was not warranted (74 FR 45396).

Please refer to the previous proposed listing and critical habitat rule (66 FR 46575; September 6, 2001), the withdrawal of the proposed listing and critical habitat rule (69 FR 76428; December 21, 2004), and the not-warranted 12-month finding (74 FR 45396; September 2, 2009) for the Sacramento Mountains checkerspot butterfly for a detailed description of previous Federal actions concerning this species.

Since we published the not-warranted rule in 2009, drought from climate change has worsened in New Mexico, worsening habitat conditions for the Sacramento Mountains checkerspot butterfly. Further, during abnormally dry conditions, both feral horses and elk switch to browsing certain plants that are important for the butterfly. Additionally, recreation on the Lincoln National Forest has increased in recent years. Due to heightened concern about the impact of these stressors on the habitat of the Sacramento Mountains checkerspot butterfly, we initiated a discretionary status review of the species in January 2021.

On March 1, 2021, we received a petition from CBD to list the Sacramento Mountains checkerspot butterfly as endangered with critical habitat. At that time, our analysis was already underway, and we included the information provided in the petition in our analysis of the species' status for consideration in this decision.

Supporting Documents

An assessment team prepared a current condition assessment report for the Sacramento Mountains checkerspot butterfly. The team was composed of Service biologists in consultation with other species experts. The report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past and present factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we will seek the expert opinions of at least three appropriate specialists regarding the report. The report will be made available for peer and partner review concurrently with this proposed listing determination. Any information we receive will be incorporated into a final rule.

I. Proposed Listing Determination

Background

The Sacramento Mountains checkerspot butterfly (butterfly) is a subspecies of the Anicia checkerspot, or variable checkerspot, in the Nymphalidae (brush-footed butterfly) family that is native to the Sacramento Mountains in south-central New Mexico. The species requires host plants for larvae, nectar sources for adults, and climatic moisture.

The Sacramento Mountains checkerspot butterfly is a small butterfly with a wingspan of approximately 5 centimeters (cm) (2 inches (in)) that has a checkered pattern with dark brown, red, orange, cream, and black spots, punctuated with dark lines (Ferris and Holland 1980, p. 5). The butterfly's antennae have yellow-orange clubs at the tip, and they have orange legs and eyes (Glassberg 2017, p. 207). Sacramento Mountains checkerspot butterfly's larvae are between 0.5 to 1.0 cm (0.2 to 0.4 in) in length. Over time, the larvae change from bare and brown to wooly and black with orange hairs (Service *et al.* 2005, p. 7).

The Sacramento Mountains checkerspot butterfly inhabits high-altitude meadows in the upper-montane and subalpine zone at elevations between 2,380 and 2,750 meters (m) (7,800 and 9,000 feet (ft)) within the Sacramento Mountains, which are an isolated mountain range in south-central New Mexico (Service 2005 *et al.,* p. 9). The ecosystem at this elevation usually is cool and wet, supporting diverse and robust plant life.

The main larval host plant for the Sacramento Mountains checkerspot butterfly is the New Mexico beardtongue (*Penstemon neomexicanus*) (Ferris and Holland 1980, p. 7), also known as New Mexico penstemon. The preferred adult nectar source is orange sneezeweed (*Helenium* (*Hymenoxys*) *hoopesii*), a native perennial forb (Service *et al.* 2005, p. 9). Other plants in the butterfly's habitat include valerian (*Valeriana edulis*), arrowleaf groundsel (*Senecio triangularis*), curlycup gumplant (*Grindelia squarrosa*), figworts (*Scrophularia* sp.), penstemon (*Penstemon* sp.), skyrocket (*Ipomopsis aggregata*), milkweed (*Asclepias* sp.), Arizona rose (*Rosa woodsii*), and Wheeler's wallflower (*Erysimum capitatum*) (Forest Service 1999, entire).

In the Sacramento Mountains, small daily rainstorms (monsoons) are common during the summer months. During this cycle, adult butterflies are active during mid-morning when the sunlight has warmed the air but before

rainstorms move into the area in the afternoon (Forest Service 1999, p. 3). On chilly, cloudy days when temperatures are around 60 degrees Fahrenheit (°F) (16 degrees Celsius (°C)), butterflies are inactive. Sacramento Mountains checkerspot butterflies are most active during sunny days when temperatures remain near 70 °F (21 °C) (Forest Service 1999, p. 4). The optimal temperature range is between 73 and 80 °F (23 and 27 °C) (Ryan 2021a, pers. comm.). When temperatures regularly exceed 80 °F (27 °C) during the summer months, few adult butterflies were detected (Hughes 2021a, pers. comm.).

The Sacramento Mountains checkerspot butterfly is univoltine, meaning there is one generation per year. The butterfly's life cycle is synchronized with the development of host and nectar plants. The flight season lasts from mid-June to the end of August. The exact timing of adult flight can vary dramatically from one year to the next (Service *et al.* 2005, pp. 10–11). The adult butterflies stagger their emergence from pupation, with numbers peaking around the second week of the flight season. Females deposit a cluster of eggs on the underside of New Mexico beardtongue leaves. A female can lay two to three sets of eggs during her short lifetime (Service *et al.* 2005, pp. 10–11). The eggs hatch within 2 weeks, and larvae collectively create a protective silken shelter, known as a tent, over the host plant, feeding upon it until winter or the plant is defoliated (Pratt and Emmel 2010, p. 108). Caterpillars at this stage are relatively immobile and rely on host plant health and abundance to complete the first stages of their life cycle (Arriens *et al.* 2020, p. 2). Caterpillars can leave the plant and search for additional resources, but it is unknown how far they can travel in search of food (Pratt and Emmel 2010, p. 108; Service *et al.* 2005, p. 11).

After the third or fourth growth cycle, the larvae enter a period of arrested metabolism known as diapause. Diapause begins between late September and early October, depending on environmental conditions. During diapause, larvae probably remain in leaf or grass litter near the base of shrubs, under the bark of conifers, or in the loose soils associated with pocket gopher (*Thomomys bottae*) mounds (see 66 FR 46575; September 6, 2001). The larvae remain in diapause until warm spring temperatures, moisture events, host plant growth, or some combination of these events prompts individuals to come out of their suspended state (Service *et al.* 2005, p. 11). It might be possible for caterpillars to re-enter or remain in diapause for more than one year if environmental conditions are not conducive for growth (Service *et al.* 2005, p. 11).

Between March and April, post-diapause larvae emerge and begin to feed again. In the spring, larvae are more mobile than they were in the fall, moving on average 2.6 meters from their natal tents (Pittenger and Yori 2003, p. 3). They have three or four more growth stages before pupating (forming a chrysalis). Precisely what triggers caterpillars to initiate pupation is not well understood, but likely relies on various environmental cues (Service *et al.* 2005, p. 11). As many as 98 percent of individuals do not survive to the adult stage (Ryan 2021b, pers. comm.).

Because the Sacramento Mountains checkerspot butterfly has a life-history pattern similar to other butterflies in the *Euphydryas* genus that exist as metapopulations, it is likely that this butterfly also has a metapopulation structure (Ehrlich *et al.* 1975, p. 221; Murphy and Weiss 1988, pp. 192–194). A metapopulation is a group of local populations within an area, where typically migration from one local population to other areas containing suitable habitat is possible, but not routine (Murphy and Weiss 1988, p. 192). Movement between areas containing suitable habitat (*i.e.,* dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitat (Service *et al.* 2005, p. 15). Metapopulation-level processes appear to be critical to the long-term persistence of the Sacramento Mountains checkerspot butterfly.

Butterflies in the genus *Euphydryas* are typically restricted to specific habitats (Ehrlich *et al.* 1975, p. 225; Cullenward *et al.* 1979, p. 1; Murphy and Weiss 1988, p. 197). The extent of the historical range of the Sacramento Mountains checkerspot butterfly is unknown due to limited information collected on this subspecies before its description in 1980 (Ferris and Holland 1980, p. 7). Although the Sacramento Mountains checkerspot's historical range is unknown, the species is thought to have once occupied a more extensive (but still limited) area based upon the location of its meadow habitat.

Surveys completed between 1996 and 1997 found that the butterfly occupies roughly 85 square kilometers (33 square miles) within the vicinity of the village of Cloudcroft (see 66 FR 46575; September 6, 2001). However, recent surveys indicate that the butterfly's suitable habitat is likely less than 2 square miles within the range (Forest Service 2020b, entire). The U.S. Forest Service (Forest Service) has been conducting presence-or-absence surveys since 1998 to estimate the range of the butterfly (Forest Service 1999, p. 2). Based on the best available information, the butterfly continues to exist within the same general localities (Pittenger and Yori 2003, p. 15; McIntyre 2005, pp. 1–2; McIntyre 2008, p. 1; Ryan 2007, pp. 11–12).

The range of the Sacramento Mountains checkerspot butterfly has always been discontinuous and fragmented. Spruce-fir forests punctuate suitable butterfly habitat comprised of mountain meadows, creating intrinsic barriers to butterfly dispersal and effectively isolating populations from one another (Pittenger and Yori 2003, p. 1). It is likely that the meadow habitat upon which the Sacramento Mountains checkerspot butterfly relies was influenced by fire (Brown *et al.* 2001, pp. 116–117). The historical fire regime would have allowed for more temporary connectivity between populations as it opened up the canopy of trees that separate meadows. However, fire suppression on public and private lands to protect commercial and private development in suitable habitat has resulted in the encroachment of conifers.

The Mescalero Apache Nation shares the northern border with the Sacramento Ranger District on the Lincoln National Forest. This border is the northern limit of butterfly surveys. We do not know if the range of the butterfly extends into the lands of the Mescalero Apache Nation because, to our knowledge, no surveys have been conducted on their lands (see 66 FR 46575; September 6, 2001). Although we do not have information on habitat on Mescalero Apache Nation lands, it is unlikely that there is a significant amount of suitable habitat present there because it is generally lower elevation than the Sacramento Mountains checkerspot butterfly requires (*i.e.,* between 2,380 and 2,750 m (7,800 and 9,000 ft)) and is not proximal (*i.e.,* provides connectivity) to known butterfly localities (see 66 FR 46575; September 6, 2001).

Since 1998, populations have been known from 10 meadow units on Forest Service land (Forest Service, 1999, p. 2). The meadows cover the occupied areas within the species' range and give the most accurate representation of species and habitat conditions available. These meadow units include Bailey Canyon, Pines Meadow Campground, Horse Pasture Meadow, Silver Springs Canyon, Cox Canyon, Sleepygrass Canyon, Spud Patch Canyon, Deerhead Canyon, Pumphouse Canyon, and

Yardplot Meadow. The species has been extirpated from several of these meadows recently. The Yardplot Meadow was sold and developed, while suitable habitat in Horse Pasture Meadow was eliminated by logging (Forest Service 2017, p. 3). No adults or caterpillars have been detected within Pumphouse Canyon since 2003, and the species has likely been extirpated at that site (Forest Service 2017, p. 3). In 2020, all 10 meadows were surveyed for butterflies and larvae, and a total of eight butterflies were detected in only Bailey Canyon and Pines Meadow Campground combined (Forest Service 2020b, p. 3), and no larval tents were found at any site (Forest Service 2020b, pp. 1–3; Hughes 2020, pers. comm.).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The current condition assessment report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The current condition assessment report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the current condition assessment report; the full report can be found at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2021–0069 and at *https://www.fws.gov/southwest/es/NewMexico/*.

To assess Sacramento Mountains checkerspot butterfly viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

Our analysis can be categorized into several sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current conditions of the species' demographics and habitat characteristics, including an explanation of how the species arrived

at its current condition. Throughout these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

Below, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

For the Sacramento Mountains checkerspot butterfly to maintain viability, its populations or some portion thereof must have sufficient resiliency, redundancy, and representation. Several factors influence the resiliency of Sacramento Mountains checkerspot butterfly populations, including larval and adult abundance and density, in addition to elements of the species' habitat that determine whether Sacramento Mountains checkerspot butterfly populations can survive and reproduce. These resiliency factors and habitat elements are discussed in detail in the current condition assessment report and are summarized here.

Species Needs

Abundance and Density

To successfully reproduce and increase their fecundity and abundance, butterflies need access to mates. The Sacramento Mountains checkerspot butterfly is not a long-distance flier and probably relies on local abundance and population density to successfully mate and reproduce (Pittenger and Yori 2003, p. 39). Higher densities and more abundant individuals result in more successful mating attempts and ensure species viability. Metapopulation dynamics are also maintained by abundance and density within meadows (Pittenger and Yori 2003, pp. 39–40).

Host Plants

The most crucial habitat factor for the Sacramento Mountains checkerspot butterfly is the New Mexico beardtongue's presence and abundance (McIntyre 2021a, pers. comm.). The larvae rely nearly entirely upon the New Mexico beardtongue during pre- and post-diapause. Because of the Sacramento Mountains checkerspot butterfly's dependency on New Mexico beardtongue, it is vulnerable to any type of habitat degradation, which reduces the host plant's health and abundance (Service *et al.* 2005, p. 9).

New Mexico beardtongue is a member of the Plantaginaceae, or figwort, family (Oxelman *et al.* 2005, p. 425). These perennial plants prefer wooded slopes or open glades in ponderosa pine and spruce/fir forests at elevations between 1,830 and 2,750 m (6,000 and 9,000 ft) (New Mexico Rare Plant Technical Council 1999, entire). New Mexico beardtongue is native to the Sacramento Mountains within Lincoln and Otero Counties (Sivinski and Knight 1996, p. 289). The plant is perennial, has purple or violet-blue flowers, and grows to be half a meter tall (1.9 ft). New Mexico beardtongue occurs in areas with loose soils or where there has been recent soil disturbance, such as eroded banks and pocket gopher burrows (Pittenger and Yori 2003, p. ii). Some plant species within the figwort family, including the New Mexico beardtongue, contain iridoid glycosides, a family of organic compounds that are bitter and an emetic (vomit-inducing) for most birds and mammal species. The Sacramento Mountains checkerspot butterfly, like other subspecies of *Euphydryas anicia,* sequester the iridoid glycosides as caterpillars. It is believed that these compounds make the larvae and adult butterflies unpalatable to predators (Gardner and Stermitz 1987, pp. 2152–2167).

Nectar Sources

Access to nectar sources is needed for adult Sacramento Mountains checkerspot butterflies to properly carry out their life cycle. The primary adult nectar source is orange sneezeweed (Service *et al.* 2005, p. 9). To contribute to the species' viability, orange sneezeweed must bloom at a time that corresponds with the emergence of adult Sacramento Mountain checkerspot butterflies. Although orange sneezeweed flowers are most frequently used, the butterfly has been observed collecting nectar on various other native nectar sources (Service *et al.* 2005, pp. 9–10). If orange sneezeweed is not blooming during the adult flight period (*i.e.,* experiencing phenological mismatch), survival and the butterfly's fecundity could decrease.

Habitat Connectivity

Before human intervention, the habitat of the Sacramento Mountains checkerspot butterfly was dynamic, with meadows forming and reconnecting due to natural wildfire regimes (Service *et al.* 2005, p. 21). These patterns would have facilitated natural dispersal and recolonization of meadow habitats following disturbance events, especially when there was high butterfly population density in adjacent meadows (Service *et al.* 2005, p. 21). Currently, spruce-fir forests punctuate suitable butterfly habitat, comprised of mountain meadows, creating intrinsic barriers to butterfly dispersal and effectively isolating populations from one another (Pittenger and Yori 2003, p. 1). Preliminary genetic research suggested there is extremely low gene flow across the species' range or between meadows surveyed (Ryan 2021a, pers. comm.). If new sites are to become colonized or recolonized by the butterfly, meadow areas will need to be connected enough to allow dispersal from occupied areas. Therefore, habitat connectivity is needed for genetically healthy populations across the species' range (Service 2021, p. 8).

Risk Factors for the Sacramento Mountains Checkerspot Butterfly

We reviewed the potential risk factors (*i.e.,* threats, stressors) that could be currently affecting the Sacramento Mountains checkerspot butterfly. In this proposed rule, we will discuss only those factors in detail that could meaningfully impact the status of the species. Those risk factors that are unlikely to have significant effects on Sacramento Mountains checkerspot butterfly populations, such as human collection, disease, parasites, predation, insecticides, habitat loss, and livestock grazing, are not discussed here but are evaluated in the current condition assessment report. For example, livestock grazing has the potential to impact the Sacramento Mountains checkerspot butterfly through various mechanisms (Service *et al.* 2005, pp. 29–30; Forest Service 2008, p. 70; McIntyre 2010, pp. 76–77, 94–104; Forest Service 2019, p. 21). However, because there are no active grazing allotments in any areas occupied by the butterfly, livestock grazing is not a primary risk factor for the status of the Sacramento Mountains checkerspot butterfly. The primary risk factors (*i.e.,* threats) affecting the status of the Sacramento Mountains checkerspot butterfly are overgrazing by large ungulates (Factor A), recreation (Factor A), climate change (Factor E), nonnative plants (Factor A), and an altered wildfire regime (Factor A).

Overgrazing by Large Ungulates

Historically, Merriam's elk (*Cervus canadensis merriami*), an extinct subspecies of elk, grazed meadows within the Sacramento Mountains. Under normal conditions, these species likely coexisted without impacting the existence of the butterfly. Rocky Mountain elk (*Cervus canadensis nelsoni*) have been introduced to the

Sacramento Mountains, filling the previous ecological niche held by Merriam's elk (New Mexico Department of Game and Fish 2009, unpaginated). At natural population levels and normal environmental conditions, elk do not pose a significant threat to the Sacramento Mountains checkerspot butterfly or its habitat. In fact, some studies have shown a positive correlation between elk grazing and caterpillar abundance (McIntyre 2010, pp. 66–69). Should elk herds expand beyond natural levels or occur during times of resource scarcity, browse pressure from elk can pose a significant threat to the butterfly's habitat and viability (Service 2021, p. 13).

Feral horses were inadvertently released onto the Lincoln National Forest around 2012. Horses are not native to the Sacramento Mountains and add significant browse pressure to meadows. Larger than elk, horses consume large quantities of vegetation. Roughly 60,000 horses now live throughout the Sacramento Mountains (Ryan 2021, pers. comm.).

Under typical habitat conditions, the larval host plant, New Mexico beardtongue, is not a main food source for large ungulates. However, during abnormally dry conditions, both horses and elk switch to browsing New Mexico beardtongue as other food plants become scarce (McIntyre 2010, pp. 71–73). New Mexico beardtongue remains as small rosettes less than an inch tall and does not flower when there is significant browse pressure from large herbivores. These small, stunted plants are not large enough to support tent colonies of caterpillars; any larvae will starve after hatching (Forest Service 2020b, p. 11).

Feral horse and overpopulated elk browsing, compounded with drought due to climate change, significantly impact habitat within meadow ecosystems in the range of the Sacramento Mountains checkerspot butterfly. Over the past several years, sustained drought in Otero County has driven large herbivores to graze most meadow areas to the ground (McMahan *et al.* 2021, pp. 1–2). Currently, vegetation for host plant and nectar sources is scarce in all the meadows throughout the range of the species (Forest Service 2020, p. 11).

In summary, overgrazing by large ungulates results in decline of suitable habitat, limiting larval host plants and adult nectar sources. All meadow units within the range are experiencing impacts from overgrazing.

Recreation

Over the past 10 years, recreation has increased in the Lincoln National Forest. The previous proposed listing rule (66 FR 46575; September 6, 2001) determined that off-road vehicle use on Forest Service trails posed some threat to meadow units; off-road vehicle use continues to this day and has increased in popularity. Large recreational vehicle (RV) use has also increased, and the Forest Service does not require permits for parking vehicles within the Lincoln National Forest (Service 2021, p. 14). Meadows within the range of the Sacramento Mountains checkerspot are popular with RV users because they are open, flat, and easily accessible by road (Hughes 2021b, pers. comm.). A variety of these impacts (*e.g.,* soil compaction, barren ground, trampled food plants, multiple trails, vehicle tracking) are evident in areas used by larval and adult life stages of the Sacramento Mountains butterflies; these impacts are reducing the quality or quantity of suitable habitat in and around developed campgrounds or undeveloped campsites in meadows known to support the Sacramento Mountains checkerspot butterfly (Hughes 2021b, pers. comm.).

Recreation can negatively affect the butterfly in several ways. Trampling and crushing can physically kill both individual butterflies and caterpillars. While adults can fly away, these butterflies are slow, especially on cold mornings. Recreational activities can also crush plants, including New Mexico beardtongue and orange sneezeweed. During times of drought, these plants are especially vulnerable and unlikely to survive repeated damage (Service 2021, p. 14). Additionally, RVs compact soil where large vehicles are parked. Repeated trampling by humans around the vehicles, caused by normal camping activities, will further compact soils, making it less likely for New Mexico beardtongue to recover or re-establish in former campsites (Hughes 2021b, pers. comm.).

In summary, recreation by humans can directly kill Sacramento Mountains checkerspot butterflies and their larvae. All meadow units within the range are experiencing some level of impact from recreation.

Climate Change

Climate change is impacting natural ecosystems in the southwestern United States (McMahan *et al.* 2021, p. 1). The Sacramento Mountains are sky islands surrounded by a matrix of desert grassland, which hosts a unique mix of flora and fauna (Brown *et al.* 2001, p. 116). This ecosystem is sensitive even to small changes in temperature and precipitation. Such changes to the environment can significantly alter air temperature, the amount of precipitation, and the timing of precipitation events (Service *et al.* 2005, p. 37).

New Mexico has been in a drought for the past several years. Roughly 54 percent of New Mexico is currently experiencing an exceptional drought, including the Sacramento Mountains (McMahan *et al.* 2021, pp. 1–2). Droughts of this severity push wildlife to alter behavior based on available resources, while vegetation in habitats becomes extremely degraded (McMahan *et al.* 2021, entire).

Over the past several years, annual precipitation levels have decreased throughout the butterfly's range. Snowfall and corresponding snowpack have remained well below normal levels (Forest Service 2020b, pp. 11–12). Some alpine butterflies need high levels of snowpack levels during diapause to shelter from wind and cold temperatures. The same might be true for the Sacramento Mountains checkerspot butterfly, as the species likely evolved with higher levels of winter snowpack than are common over the past decade (Hughes 2021a, pers. comm.). However, while snowpack might be an important factor, we do not have enough evidence to analyze the effects of low snow years on the butterfly.

Recent shifts in climate due to human-induced climate change can impact how species interact with their environment. The timing of butterfly life-history events during an annual cycle shift due to increases in temperature, changes in humidity, and length of growing season. These shifts can directly be attributed to the effects of climate change. For habitat specialists such as the Sacramento Mountains checkerspot butterfly, shifts in phenological timing can have important consequences for population dynamics and viability (Colorado-Ruiz *et al.* 2018, pp. 5706–5707). It is likely that climate change has already caused some level of phenotypic mismatch (when life-history traits are no longer advantageous due to changes in the environment) between the butterfly, host plants, and nectar sources. This shift negatively impacts the butterfly because it has adapted to specific timing of resource availability (*i.e.,* growth of host plants, blooming of nectar sources) in various stages of its life cycle, and climate change has altered the timing, quality, and quantity of those resources.

The Sacramento Mountains checkerspot butterfly needs adequate

vegetation growth in host plants and nectar sources during the summer months to survive (Service *et al.* 2005, p. 15). Vegetation growth within the butterfly's range appears to rely heavily on summer rains. Large rainfall events typically form during the mid-summer months in the Sacramento Mountains, marking the beginning of the monsoon season. These midday showers occur almost daily for several months, stimulating much of the vegetation to grow and proliferate during the midsummer season. Specifically, New Mexico beardtongue growth increases in response to the monsoons. It is thought that moisture might also encourage the butterflies to emerge from diapause as well (Service *et al.* 2005, pp. 37–38).

Climate change is impacting the timing of monsoon events throughout the Southwest (Service 2021, p. 15). New Mexico beardtongue and other plant species in sub-alpine meadows are adapted to the pulse of moisture from monsoons (Service *et al.* 2005, pp. 37–38). With a lack of, or altered, monsoon rains, the butterfly is at risk, as the species relies on vegetation growth dependent upon the timing of precipitation.

The 2020 monsoon season was an exceptionally weak one, with far less precipitation falling than in an average summer (McMahan *et al.* 2021, unpaginated). As a result, New Mexico beardtongue growth was also weak; few plants grew larger than small rosettes on the ground. Even fewer plants survived to produce flowers (Forest Service 2020b, p. 12). Some experts believe that the dry conditions, compounded with increased browse pressure from large ungulates, contributed to the deterioration of habitat throughout the Sacramento Mountains checkerspot butterfly's range (Ryan *et al.* 2021, pers. comm.).

In summary, climate change impacts viability of the Sacramento Mountains checkerspot butterfly. All meadow units within the range are experiencing impacts from climate change.

Nonnative Plants

Nonnative plants have begun to encroach into meadow areas within the Lincoln National Forest. Other species of butterfly had become scarcer when nonnative plants appeared in suitable butterfly habitats (Hughes 2021b, pers. comm.). During the drought, Kentucky bluegrass (*Poa pratensis*) proliferated within meadow areas. This aggressive, nonnative plant, which is primarily windblown, can outcompete native wildflowers, such as New Mexico beardtongue. As nonnative plants begin to expand their influence, native plants, host and nectar plants for butterflies, such as New Mexico beardtongue and orange sneezeweed, are likely to become scarcer (Kennedy 2020, pers. comm.; 62 FR 2313, January 16, 1997).

In summary, nonnative plants can outcompete the native plants that Sacramento Mountains checkerspot butterflies and their larvae require. All meadow units within the range are experiencing some level of impact from nonnative plants.

Altered Wildfire Regime

Fire is a natural part of the Sacramento Mountains ecosystem and would have historically maintained many of the ecosystem processes within the butterfly's range. The Lincoln National Forest has largely suppressed wildfires over the past 150 years (Service *et al.* 2005, p. 21). Before human intervention, there would have been gradual ecosystem clines between meadows and forests. Grassland corridors or sparsely forested glades would have connected meadow areas. These habitat types would have allowed for the butterfly to pass through, thereby maintaining metapopulation dynamics. Fire exclusion and suppression have reduced the size of grasslands and meadows by allowing the encroachment of conifers, and these trends are projected to continue (Service *et al.* 2005, pp. 21–22). No significant wildfires have occurred in butterfly habitat since 1916 (Service *et al.* 2005, p. 21). Before active fire suppression, fire in the Sacramento Mountains occurred at intervals between three and ten years (Forest Service 1998, p. 63). These frequent, low-intensity, surface fires historically maintained a forest that was more open (*i.e.,* more non-forested patches of different size; more large, older trees; and fewer dense thickets of evergreen saplings). Such low-intensity fires are now rare events. A large fire can occur within the range of the species; there have been at least nine large, severe wildfires (over 90,000 ac (34,000 ha)) in the Sacramento Mountains during the past fifty years (Forest Service 1998, p. 63). Trees and other woody vegetation have begun encroaching into suitable meadow habitats for the butterfly. Current forest conditions make the chances of a high-severity fire within the range of the butterfly increasingly likely (Service *et al.* 2005, p. 21).

It is likely that fire exclusion and historical cattle grazing have altered and increased the threat of wildfire in ponderosa pine (*Pinus ponderosa*) and mixed conifer forests in the semi-arid western interior forests, including New Mexico (Forest Service 1998, pp. 3, 63). Further, there has been a general increase in the dominance of woody plants, with a decrease in the herbaceous (non-woody) ground cover used by the butterfly (Service *et al.* 2005, pp. 32–33). These data indicate that the quality and quantity of the available butterfly habitat is decreasing rangewide. Therefore, we conclude that fire exclusion has substantially affected the species and will likely continue to significantly degrade the quality and quantity of suitable habitat.

In summary, the altered fire regime can impact Sacramento Mountains checkerspot butterflies and their larvae. All meadow units within the range are experiencing impacts from altered fire regime.

Summary

Our analysis of the current influences on the needs of the Sacramento Mountains checkerspot butterfly for long-term viability revealed there are several threats that pose the largest risk to viability: Overgrazing by large ungulates, recreation, climate change, nonnative plants, and an altered wildfire regime. These influences reduce the availability of host plants and nectar sources, thereby reducing the quantity and quality of habitat, in addition to reducing ecological and genetic diversity.

Species Condition

The current condition of the Sacramento Mountains checkerspot butterfly considers the risks to those populations that are currently occurring. In the current condition assessment report, for each population, we developed and assigned condition categories for two demographic factors and three habitat factors that are important for viability of the Sacramento Mountains checkerspot butterfly. The condition scores for each habitat factor were then used to determine an overall condition of each population and meadow: High, moderate, low, very low, or extirpated.

Two populations of the Sacramento Mountains checkerspot butterfly remain in two meadows, Bailey Canyon and Pines Meadow Campground. Historically, the populations likely had greater connectivity, but today they are small and isolated due to the altered wildfire regime resulting in a higher concentration of trees that separate meadows. Repopulation of extirpated locations is unlikely without human assistance. If butterflies have been detected at any site once or more during the last 3 years, that population is not considered extirpated. The two remaining populations are in very low

condition in terms of demographic factors (adult density and larval density) (see Table 1, below) and low condition in terms of overall meadow condition (see Table 2, below). There have not been any observations of adults or larvae in the past 3 consecutive years in the any of other eight populations, and they are, therefore, considered demographically extirpated. Six of those eight populations have very low overall meadow condition, and two are considered extirpated for overall meadow condition because suitable habitat for the Sacramento Mountains checkerspot butterfly no longer exists there.

TABLE 1—CURRENT CONDITION OF DEMOGRAPHIC FACTORS OF THE SACRAMENTO MOUNTAINS CHECKERSPOT BUTTERFLY

Meadow unit	Demographic factors	
	Adult density	Larval density
Bailey Canyon	Very Low	Very Low.
Pines Meadow Campground	Very Low	Very Low.
Cox Canyon	Extirpated	Extirpated.
Silver Springs Canyon	Extirpated	Extirpated.
Pumphouse Canyon	Extirpated	Extirpated.
Sleepygrass Canyon	Extirpated	Extirpated.
Spud Patch Canyon	Extirpated	Extirpated.
Deerhead Canyon	Extirpated	Extirpated.
Horse Pasture Meadow	Extirpated	Extirpated.
Yardplot Meadow	Extirpated	Extirpated.

TABLE 2—CURRENT CONDITION OF HABITAT FACTORS OF THE SACRAMENTO MOUNTAINS CHECKERSPOT BUTTERFLY

Meadow unit	Habitat factors			Overall meadow condition
	Host plants	Nectar sources	Connectivity	
Bailey Canyon	Very Low	Low	Moderate	Low.
Pines Meadow Campground	Very Low	Low	Moderate	Low.
Cox Canyon	Very low	Low	Low	Very Low.
Silver Springs Canyon	Very Low	Low	Moderate	Very Low.
Pumphouse Canyon	Very Low	Low	Low	Very Low.
Sleepygrass Canyon	Very Low	Low	Moderate	Very Low.
Spud Patch Canyon	Very Low	Low	Moderate	Very Low.
Deerhead Canyon	Extirpated	Very Low	Low	Very Low.
Horse Pasture Meadow	Extirpated	Extirpated	High	Extirpated.
Yardplot Meadow	Extirpated	Extirpated	Low	Extirpated.

Bailey Canyon and Pines Meadow Campground are two adjacent meadows in the northwest part of the Sacramento Mountains checkerspot butterfly's range. During the 2020 survey season, approximately eight butterflies were detected in both meadows combined (Forest Service 2020b, p. 3), and no larval tents were found (Forest Service 2020b, pp. 1–3; Phillip Hughes 2020, pers. comm.). Because of these adult and larval density levels, we categorized resiliency for demographics as very low for both meadows, which were the only two where butterflies were found. In addition, the overall meadow condition for these sites was low because there are few host plants and nectar sources present. Although nectar sources are present, they are not blooming or providing enough resources for the butterfly colonies. Further, these meadows are within 800 meters of each other, which is within the dispersal distance of the butterfly, allowing for potential gene flow between populations.

Overall resiliency of Sacramento Mountains checkerspot butterfly populations is very low for demographic factors and low for habitat factors. This is because butterflies were only found in 2 of the 10 documented meadows, and both had very low recorded adult and larval abundance and density numbers. Additionally, these two meadows have poor habitat conditions (few host plants, nectar sources are abundant but provide insufficient resources, and some connectivity to other meadows), and the other eight meadows have either very low condition or are extirpated in terms of habitat factors.

We define representation for the Sacramento Mountains checkerspot butterfly as having ecological and genetic diversity. As a narrow-range endemic, the entire range of the species is approximately 32 square miles. However, suitable habitat is limited to only about 2 square miles. Today, only 0.2 square miles might be occupied by the butterfly. This range contraction suggests that most of the original representation present within the species has declined. The entirety of the butterfly's range represents one representation area because of the narrow range and limited ecological diversity. The populations are small and isolated in this single representation area with very little to no connectivity between populations. The occupied meadows are among spruce-fir forests, so some barriers limit the dispersal of individuals among the populations. Due to the limited habitat connectivity of populations, individual Sacramento Mountains checkerspot butterflies rarely, if ever, travel between populations. This effectively restricts the transfer of genetic material, thus limiting genetic diversity. There was likely greater habitat connectivity between populations in the past due to a more natural fire regime. Therefore, overall representation was always limited for this species and has declined in recent years.

We define redundancy for the Sacramento Mountains checkerspot butterfly as having populations or metapopulations spread across the

range. There are only 2 extant Sacramento Mountains checkerspot butterfly populations located in adjacent meadows out of 10 documented metapopulations within the single representation area. Given the historical distribution of the butterfly, it is likely that Sacramento Mountains checkerspot butterfly populations were more abundant within the Sacramento Mountains. Therefore, redundancy of the butterfly has declined over time. As a consequence of these current conditions, the viability of the Sacramento Mountains checkerspot butterfly primarily depends on maintaining and restoring the remaining isolated populations and reintroducing populations where feasible.

We incorporated the cumulative effects of the operative threats into our analysis when we characterized the current condition of the species. Because our characterization of current condition considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

Several habitat management actions can benefit the viability of the Sacramento Mountains checkerspot butterfly. To address the threat of overgrazing from large ungulates, the Lincoln National Forest erected exclosures to protect butterfly habitats from browsing. These efforts are currently focused within Bailey Canyon and Pines Meadow Campground, where adult butterflies were most recently found. Botanists involved with the Sacramento Mountains checkerspot butterfly working group are currently growing plants for habitat restoration. Biologists will soon plant nectar sources, including orange sneezeweed and New Mexico beardtongue, within exclosures to ensure the individual needs of caterpillars and adult butterflies are met.

The Forest Service has proposed that fire management aimed at reducing tree stocking within forested areas surrounding meadows might also help restore suitable habitat and connectivity throughout the range of the butterfly. Maintaining edge habitat and connectivity could greatly improve the butterfly's viability in the long term.

Determination of Sacramento Mountains Checkerspot Butterfly's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an ''endangered species'' or a ''threatened species.'' The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an ''endangered species'' or a ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the Sacramento Mountains checkerspot butterfly has declined in abundance, density, and number of populations. Currently, there are only two extant populations where the species exists in very low abundances and are isolated from one another. Furthermore, existing available habitat is reduced in quantity and quality relative to historical conditions. Our analysis revealed several threats that caused these declines and pose a meaningful risk to the viability of the species. These threats are primarily related to habitat changes (Factor A) and include overgrazing by large ungulates, recreation, nonnative plants, and altered wildfire regime, in addition to climate change (Factor E).

Over the past two decades, the species has declined, both in abundance and in the area occupied (Forest Service 2020b, p. 2). Because of increased populations of ungulates (*i.e.,* elk, horses), grazing has increased in the subalpine meadows that support the Sacramento Mountains checkerspot butterfly, reducing the availability of host plants and nectar sources. The reduction in habitat quality and quantity is further exacerbated by the impact of drought associated with climate change. Additionally, the altered wildfire regime has decreased habitat connectivity, and now populations are more isolated from one another with limited to no dispersal among populations.

We considered sites with butterfly detections during the last 3 years to be extant for the purposes of this proposed determination. Because adults or larvae have not been observed in the past 3 consecutive years in 8 of the 10 populations, we consider those 8 populations functionally extirpated. The two remaining populations are extremely small and isolated. The habitat at those sites is currently in very low condition due to a lack of both host plants for larvae and nectar sources for adults.

Historically, the species, with more abundant and larger populations, would have been more resilient to stochastic events. Even if such events extirpated some populations, they could be recolonized over time by dispersal from nearby surviving populations. Because many of the areas of suitable habitat may be small and support small numbers of butterflies, local extirpation of these small populations is probable. A metapopulation's persistence depends on the combined dynamics of these local extirpations and the subsequent recolonization of these areas by dispersal (Murphy and Weiss 1988, pp. 192–194). Habitat loss and the altered wildfire regime have reduced the size of and connectivity between patches of suitable butterfly habitat. The reduction in the extent of meadows and other suitable non-forested areas has likely eliminated connectivity among some localities and may have increased the distance beyond the normal dispersal ability of the Sacramento Mountains checkerspot butterfly, making recolonization of some patches following local extirpation more difficult. In addition, habitat reduction lowers the quality of remaining habitat by reducing the diversity of microclimates and food plants for larvae and adult butterflies (Murphy and Weiss 1988, p. 190).

Preliminary genetic evidence suggests little gene flow between these units (Ryan *et al.* 2021, pers. comm.). Connectivity, which would promote resiliency and representation, has been lost. Eight populations are functionally extirpated, and the remaining two populations are in very low condition in terms of demographic factors and low condition in terms of habitat factors and are at high risk of loss. The Sacramento Mountains checkerspot butterfly is extremely vulnerable to catastrophic

events (*i.e.,* high-intensity, large wildfires) in suitable butterfly habitats.

In summary, much of the remaining suitable butterfly habitat, and therefore the long-term viability of the species, is at risk due to the direct and indirect effects of overgrazing by large ungulates, recreation, climate change, nonnative plants, and an altered wildfire regime. The remaining populations are fragmented and isolated from one another, unable to recolonize naturally. The populations are largely in a state of chronic degradation due to habitat loss, which is exacerbated by climate change, limiting their resiliency. The limited geographic range of the Sacramento Mountains checkerspot butterfly increases the threat of extinction for this species given the expected continuing loss and degradation of suitable habitat and increased risks of extinction from catastrophic events, such as catastrophic fire. Historically, with a larger range of likely interconnected populations, the species would have been more resilient to stochastic events because even if some populations were extirpated by such events, they could be recolonized over time by dispersal from nearby surviving populations. This connectivity, which would have made for a resilient species overall, has been lost, and with two populations in very low demographic condition and low habitat condition, the remnant populations are at risk of loss. A threatened status for the Sacramento Mountains checkerspot butterfly is not appropriate because the species has already shown significant declines in current resiliency, redundancy, and representation due to the threats mentioned above.

Thus, after assessing the best available information, we determine that the Sacramento Mountains checkerspot butterfly is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the Sacramento Mountains checkerspot butterfly is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Sacramento Mountains checkerspot butterfly warrants listing as endangered throughout all of its range, our determination is consistent with the decision in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020), in which the court vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the Sacramento Mountains checkerspot butterfly meets the Act's definition of an ''endangered species.'' Therefore, we propose to list the Sacramento Mountains checkerspot butterfly as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of New Mexico would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Sacramento Mountains checkerspot butterfly. Information on our grant programs that are available to aid species recovery can be found at *http://www.fws.gov/grants.*

Although the Sacramento Mountains checkerspot butterfly is only proposed for listing under the Act at this time,

please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Forest Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxon that were collected prior to the effective date of a final rule adding this taxon to the Federal List of Endangered and Threatened Wildlife;

(2) Activities authorized, funded, or carried out by Federal agencies (*e.g.,* grazing management, non-forested area management, private or commercial development, recreational trail or forest road development or use, road construction, prescribed burns, timber harvest, pesticide/herbicide application, or pipeline or utility line construction crossing suitable habitat) when such activity is conducted in accordance with a biological opinion from the Service on a proposed Federal action;

(3) Low-impact, infrequent, dispersed human activities on foot or horseback that do not degrade butterfly habitat (*e.g.,* bird watching, sightseeing, backpacking, hunting, photography, camping, hiking);

(4) Activities on private lands that do not result in the take of the Sacramento Mountains checkerspot butterfly, including those activities involving loss of habitat, such as normal landscape activities around a personal residence, proper grazing management, road construction that avoids butterfly habitat, and pesticide/herbicide application consistent with label restrictions; and

(5) Activities conducted under the terms of a valid permit issued by the Service pursuant to section 10(a)(1)(A) and 10(a)(1)(B) of the Act.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Capture (*i.e.,* netting), survey, or collection of specimens of this taxon without a permit from the Service pursuant to section 10(a)(1)(A) of the Act;

(2) Incidental take of Sacramento Mountains checkerspot butterfly without a permit pursuant to section 10(a)(1)(B) of the Act;

(3) Sale or purchase of specimens of this taxon, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(4) Use of pesticides/herbicides that are in violation of label restrictions resulting in take of Sacramento Mountains checkerspot butterfly;

(5) Unauthorized release of biological control agents that attack any life stage of this taxon;

(6) Removal or destruction of the native food plants being used by Sacramento Mountains checkerspot butterfly, defined as *Penstemon neomexicanus, Helenium hoopesii,* or *Valeriana edulis,* within areas that are used by this taxon that results in harm to this butterfly; and

(7) Destruction or alteration of Sacramento Mountains checkerspot butterfly habitat by grading, leveling, plowing, mowing, burning, herbicide or pesticide spraying, intensively grazing, or otherwise disturbing non-forested openings that result in the death of or injury to eggs, larvae, or adult Sacramento Mountains checkerspot butterflies through significant impairment of the species' essential breeding, foraging, sheltering, or other essential life functions.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals). Additionally, our regulations at 50 CFR 424.02 define the word ''habitat,'' for the purposes of designating critical habitat only, as the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The implementing regulations at 50 CFR 424.12(b)(2) further delineate unoccupied critical habitat by setting out three specific parameters: (1) When designating critical habitat, the Secretary will first evaluate areas occupied by the species; (2) the Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species; and (3) for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the status report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

As the regulatory definition of ''habitat'' at 50 CFR 424.02 reflects, habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that

habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed earlier in this document, there is currently no imminent threat of collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our current condition assessment report and proposed listing determination for the Sacramento Mountains checkerspot butterfly, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to Sacramento Mountains checkerspot butterfly and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because the Secretary has not identified other circumstances for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the Sacramento Mountains checkerspot butterfly.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Sacramento Mountains checkerspot butterfly is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. Careful assessments of the economic and environmental impacts that may occur due to a critical habitat designation are not yet complete, and we are in the process of working with the States and other partners in acquiring the complex information needed to perform those assessments. The information sufficient to perform a required analysis of the impacts of the designation is lacking. Therefore, we conclude that the designation of critical habitat for the Sacramento Mountains checkerspot butterfly is not determinable at this time. As noted above, the Act allows the Service an additional year to publish a critical habitat designation that is not determinable at the time of listing (16 U.S.C. 1533(b)(6)(C)(ii)).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the Sacramento Mountains checkerspot butterfly, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA

analysis for critical habitat designation. We will invite the public to comment on the extent to which the upcoming proposed critical habitat designation may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing the upcoming proposed critical habitat rule.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We solicited information from the Mescalero Apache Nation within the range of the Sacramento Mountain checkerspot butterfly to inform the development of the current condition assessment report, but we did not receive a response. We will also provide the Mescalero Apache Nation the opportunity to review a draft of the current condition assessment report and provide input prior to making our final determination on the status of the Sacramento Mountain checkerspot butterfly. We will continue to coordinate with affected Tribes throughout the listing process as appropriate.

References Cited

A complete list of references cited in this proposed rule is available on the internet at *http://www.regulations.gov* and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11 amend the table in paragraph (h) by adding an entry for ''Butterfly, Sacramento Mountains checkerspot'' to the List of Endangered and Threatened Wildlife in alphabetical order under INSECTS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
INSECTS				
*	*	*	*	*
Butterfly, Sacramento Mountains checkerspot.	*Euphydryas anicia cloudcrofti.*	Wherever found	E	[**Federal Register** citation when published as a final rule].
*	*	*	*	*

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–01210 Filed 1–24–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 87, No. 16

Tuesday, January 25, 2022

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

Agricultural Marketing Service

[Doc. No. AMS–FTPP–21–0075]

Notice of Request for Reinstatement With Revision of Previously Approved Information Collection—United States Warehouse Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for a reinstatement with revision to the previously approved information collection under the United States Warehouse Act (USWA).

DATES: Comments must be received by March 28, 2022.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be submitted via the internet at: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Dan Schofer, Warehouse and Commodity Management Division, Fair Trade Practices Program, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2055, South Building, STOP 3601, Washington, DC 20250–3601; Telephone: 202–720–0219; Email: *dan.schofer@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: United States Warehouse Act (USWA).

OMB Number: 0581–0305.

Expiration Date of Approval: October 31, 2021.

Type of Request: Reinstatement with Revision of previously approved information collection.

Abstract: AMS is responsible, as required by the USWA, 7 U.S.C. 869 *et seq.,* to license public warehouse operators that are in the business of storing agricultural products, to examine such federally licensed warehouses and to license qualified persons to sample, inspect, weigh, and classify agricultural products. AMS licenses under the USWA cover approximately half of all commercial grain and cotton warehouse capacities in the United States. The regulations that implement the USWA govern the establishment and maintenance of systems under which documents, including documents of title on shipment, payment, and financing, may be issued, or transferred for agricultural products. Some of these systems and documents issued may be electronic. The regulations are found at 7 CFR 869 *et seq.*

This information collection allows AMS to effectively administer the regulations, licensing, and electronic provider agreements and related reporting and recordkeeping requirements as specified in the USWA.

The forms in this information collection are used to provide those charged with issuing licenses under the USWA a basis to determine whether the warehouse and the warehouse operator meet application requirements to receive a license, and to determine compliance once the license is issued.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.46 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Respondents: Warehouse operators and electronic providers participating in the USWA program.

Estimated Number of Respondents: 3,000.

Estimated Total Annual Responses: 19,011.

Estimated Number of Responses per Respondent: 6.337.

Estimated Total Annual Burden on Respondents: 40,587 hours.

Comments are invited on: (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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Dan Schofer at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section. All comments received will be posted without change, including any personal information provided, at *www.regulations.gov* and will be included in the record and made available to the public. Furthermore, a summary of all comments received will be included in the request for Office of Management and Budget (OMB) approval.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–01434 Filed 1–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 19, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are

requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 24, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Laboratories.

OMB Control Number: 0583–0158.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et. seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et. seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statues mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS will use one form to collect information to help assess laboratories participating in the Accredited Laboratory program to ensure they meet the required standards.

Need and Use of the Information: Any non-federal laboratory that is applying for the FSIS Accredited Laboratory program will need to complete an Application for FSIS Accredited Laboratory Program 10,110–2 form. State or private laboratories need only submit the application once for entry into the program. FSIS uses the information collected by the form to help assess the laboratory applying for admission to the FSIS Accredited Laboratory program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1.

Food Safety and Inspection Service

Title: Records to be Kept by Official Establishments and Retail Stores that Grind Raw Beef Products.

OMB Control Number: 0583–0165.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et. seq.*). These statues mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and properly labeled and packaged.

FSIS requires that all grinders or choppers of raw beef products, beef manufacturing trimmings, or trimmings fabricated at retail intended for use in raw ground or chopped beef products, including retail facilities, are persons required by FMIA to keep records which will fully and correctly disclose all transactions involved in their business subject to the Act. If not doing so already, these businesses must maintain records that disclose the identity and supplier of all materials used in the preparation of each lot of raw ground or chopped beef product.

Need and Use of the Information: FSIS requires that all establishments and retail stores that grind or chop beef products are required to keep these records. These records provide critical information about how, when, and where raw ground or chopped beef product was prepared, shipped, received, stored, and handled, which are essential to illness outbreak investigations, recalls, and other agency public health activities conducted by FSIS.

In addition, FSIS requires that specific information be kept in the required records and that retail stores maintain store-designed systems that allow them to link individual packages of raw ground or chopped beef products prepared and sold by them to the required records. The required records must include the following information:

1. Name, point of contact (name, title, email, and facsimile number) telephone number, and establishment number of the Federal, State, or foreign establishment supplying the raw source material,

2. Supplier lot numbers and production dates for each raw source material used; and,

3. The names of the supplied materials.

Description of Respondents: Business or other for-profit.

Number of Respondents: 65,911.

Frequency of Responses: Recordkeeping: Weekly, Annually; Monthly.

Total Burden Hours: 1,658,650.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–01343 Filed 1–24–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Office of the Chief Financial Officer

Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: Office of the Chief Financial Officer, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the intention of the Office of the Chief Financial Officer to request the renewal of a currently approved information collection (OMB No. 0505–0027) for suspension and debarment and drug-free workplace certifications.

DATES: Comments on this notice must be received by March 28, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This website permits short comments in a comment field on the web page or file attachments for lengthier comments. Go to *https://www.regulations.gov* for instructions.
- *Postal Mail/Commercial Delivery:* Attention: Tyson P. Whitney, Director, Transparency and Accountability Reporting Division, Office of the Chief Financial Officer, Room 3027–S, Mail Stop 9011, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250; *tyson.whitney@usda.gov.*

All comments will be available for public inspection and posted without change, including any personal

information, to *https://www.regulations.gov.* Out of an abundance of caution for USDA employees and the public, onsite review is closed, with limited exceptions, to reduce the risk of COVID–19 transmission. However, remote customer service will continue via email at the contact information cited above. The public is encouraged to submit comments via *https://www.regulations.gov* or email, as there may be a delay in processing mail. Hand deliveries and couriers may be received by scheduled appointment only.

FOR FURTHER INFORMATION CONTACT: Tyson P. Whitney, Director, Transparency and Accountability Reporting Division, Office of the Chief Financial Officer, Room 3027–S, Mail Stop 9011, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250; 202–720–8978, *tyson.whitney@usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320, this notice announces the intention of the USDA Office of the Chief Financial Officer to request the renewal of a currently approved information collection (OMB No. 0505–0027) for suspension and debarment and drug-free workplace certifications.

Title: Suspension and Debarment and Drug-Free Workplace Certifications.

OMB Number: 0505–0027.

Expiration Date of Current Approval: April 30, 2022.

Type of Request: Intent to extend a currently approved information collection for three years.

Estimate of Burden: Public reporting burden for this total collection of information is estimated to average 0.25 hours per response per individual form. This burden is assumed for all forms in the aggregate.

Type of Respondents: Individuals or private entities; businesses or other for profit; not-for profit; Federal, state, local or tribal governments; institutions of higher education or other research organizations; foreign organizations.

Estimated Number of Respondents: 620,697.

Estimated Number of Responses: 1,241,394.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 310,349.

Form	Number of respondents	Number of responses per respondent	Number of responses	Average time to prepare (hrs)	Total annual burden on respondents (hrs)
AD–1047	124,170	2	248,340	0.25	62,085
AD–1048	124,131	2	248,262	0.25	62,066
AD–1049	124,170	2	248,340	0.25	62,085
AD–1050	124,113	2	248,226	0.25	62,057
AD–1052	124,113	2	248,226	0.25	62,057
Total	620,697	2	1,241,394	0.25	310,349

Comments from interested parties are invited on: (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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval.

Tyson P. Whitney,

Director, Transparency and Accountability Reporting Division.

[FR Doc. 2022–01392 Filed 1–24–22; 8:45 am]

BILLING CODE 3410–KS–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0041]

Notice of Decision To Revise the Requirements for the Importation of Plums (Prunus domestica) From Chile Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to revise the requirements relative to the importation into the United States of plums from Chile. Based on the findings of a commodity import evaluation document, which we made available to the public for review and comment through a previous notice, we have determined that, in addition to the existing option of irradiation, plums from Chile may safely be imported under a systems approach for mitigation of the risk posed by European grapevine moth, with an additional option for fumigation with methyl bromide.

DATES: The articles covered by this notification may be authorized for importation under the revised requirements after January 25, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2352; *Claudia.Ferguson@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart L—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations provides the requirements for authorizing the importation of fruits and vegetables into the United States, as well as revising existing requirements for the importation of fruits and vegetables. Paragraph (c) of that section provides that the name and origin of all

fruits and vegetables authorized for importation into the United States, as well as the requirements for their importation, are listed on the internet in APHIS' Fruits and Vegetables Import Requirements database, or FAVIR (*https://epermits.aphis.usda.gov/manual*). It also provides that, if the Administrator of APHIS determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk documentation and determination available for public comment.

Chile plums (*Prunus domestica*) are currently listed in FAVIR as authorized for importation into the United States. Following detections during preclearance inspections in Chile of European grapevine moth (EGVM; *Lobesia botrana*) larvae and pupae in plums intended for shipment to the United States, on April 1, 2021, however, APHIS issued a Federal Order (DA–2021–04) [1] modifying the requirements for such imports to prevent the introduction of EGVM. The Federal Order required plums exported to the United States from Chile to be irradiated with a minimum absorbed dose of 400 Gy upon arrival in the United States or subjected to methyl bromide fumigation that was conducted in Chile under an APHIS preclearance program. The allowance for methyl bromide fumigation provided for in the Federal Order ended on May 31, 2021.

The national plant protection organization (NPPO) of Chile has requested that APHIS revise the import requirements for plums from Chile to the United States to allow for alternative mitigations to address EGVM other than irradiation. In response to this request from the NPPO, APHIS prepared a commodity import evaluation document (CIED). The CIED recommended that, in addition to irradiation, the EGVM risk associated with the importation of plums from Chile could also be mitigated by a systems approach or by methyl bromide fumigation in Chile or at the port of entry in the United States.

Accordingly, in accordance with the requirements of § 319.56–4, we published a notice [2] in the **Federal Register** on November 3, 2021 (86 FR 60613–60614, Docket No. APHIS–2021–0041), in which we announced the availability, for review and comment, of the CIED.

We solicited comments on the notice for 60 days ending January 3, 2022. We received 35 comments by that date. They were from producers, importers, U.S. and Chilean trade associations, a port authority, the Government of Chile, and individual members of the public. All but two supported the proposal. The comments are discussed below by topic.

The commenters who opposed the proposed systems approach viewed irradiation as a more effective treatment approach. One commenter stated that our proposed systems approach may be inadequate to mitigate the risk of an EGVM introduction via the importation of plums from Chile because the plums are produced in a region where EGVM is prevalent. The commenter further suggested that not all farms that produce the plums will be able to comply with our systems approach requirements and that it was likely that the great majority of the smaller farms in proximity to the larger ones will not be able to properly mitigate the pest. According to the commenter, restricted pests have been found before in other commodities that are currently imported from Chile under systems approach.

We do not agree with these commenters that irradiation should be the only approved mitigation for the importation of plums from Chile into the United States. APHIS has determined that the systems approach will also provide an appropriate level of phytosanitary protection. We note that the systems approach includes measures that specifically address the commenters' concerns: Only sites that are registered with the NPPO may export under the systems approach, registered sites must trap for EGVM according to guidelines approved by APHIS, and all sites in regulated or control areas for EGVM must be inspected by the NPPO for EGVM. Additionally, all shipments of plums from Chile will be subject to inspection for quarantine pests under the terms of APHIS preclearance, and may be subject to inspection at ports of entry into the United States.

We also note that the commenters' concerns did not pertain to the efficacy of methyl bromide.

One of the commenters also opposed fumigation with methyl bromide on the grounds that it is harmful to human health. The commenter expressed the view that methyl bromide should be banned.

While APHIS regulates the use of methyl bromide as a pest risk mitigation measure, the Agency does not have the statutory authority to regulate for public health or ban its usage on public health grounds.

One of the commenters writing in support of the proposal requested that to ensure continuity in the market, we authorize entry of the fruit, subject to fumigation or quarantine requirements as needed but not irradiation, prior to the effective date of this notice by means of a Federal Order.

As noted previously in this notice, the regulations in paragraph (c) of § 319.56–4 provide that if the Administrator determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk documentation and determination available for public comment. The paragraph further provides that this notice will be published, and public comment solicited, prior to allowing importation of the fruit or vegetable subject to the phytosanitary measures specified in the notice. These regulatory provisions preclude the issuance of a Federal Order in order to relieve restrictions on the importation of plums from Chile as requested by the commenter.

Finally, several commenters asked that this final notice be issued and effective the day the comment period closed.

As a **Federal Register** document, this notice is subject to the review and clearance processes that are required for all such documents issued by the USDA.

Therefore, in accordance with the regulations in § 319.56–4(c), we are announcing our decision to authorize the importation into the United States of plums from Chile subject to the conditions listed in the CIED that accompanied the initial notice.

These conditions will be listed in the FAVIR database (available at *https://epermits.aphis.usda.gov/manual*). In addition to these specific measures, plums from Chile will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the recordkeeping and burden requirements associated with this action are included under the Office of Management and Budget (OMB) control number 0579–0049.

[1] To view the Federal Order, go to: *https://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/downloads/2021/da-2021-04.pdf.*

[2] To view the notice and the CIED, go to *www.regulations.gov.* Enter APHIS–2021–0041 in the Search field.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E- Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 19th day of January 2022.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–01388 Filed 1–24–22; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual (online) meeting Friday, February 4, 2022 at 1:00 p.m. Central Time. The purpose of the meeting is for the Committee to discuss testimony received regarding IDEA compliance and implementation in Arkansas schools.

DATES: The meeting will be held on Friday, February 4, 2022 1:00 p.m.–2:00 p.m. Central time.

ADDRESSES:

Web Access (audio/visual): Register at: *https://bit.ly/3FjiuTD*

Phone Access (Audio Only): 800–360–9505, Access Code: 2764 352 2963

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov*.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Discussion: IDEA Compliance and Implementation in Arkansas School
III. Public Comment
VI. Adjournment

Dated: January 19, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01347 Filed 1–24–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Monday February 7, 2022 at 12:00 p.m. Eastern time. The Committee will review project proposal to study civil rights and fair housing in the state.

DATES: The meeting will take place on Monday February 7, 2022 from 12:00 p.m.–1:00 p.m. Eastern time.

ADDRESSES:

Online Regisration (Audio/Visual): https://bit.ly/33QlGJo.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2763 112 6887.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to these discussions.

Committee meetings are available to the public through the above listed online registration link or call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the

Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Civil Rights and Fair Housing in Pennsylvania
Future Plans and Actions
Public Comment
Adjournment

Dated: January 19, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01348 Filed 1–24–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Arizona Advisory Committee (Committee) to the Commission will hold a meeting via Webex on Wednesday, March 9, 2022, from 12:30 p.m. to 2:00 p.m. Mountain Time for the purpose of discussing potential civil rights topics to study.

DATES: The meeting will be held on:

- Wednesday, March 9, 2022, from 12:30 p.m.–2:00 p.m. Mountain Time

Access Information:

Wednesday, March 9th at 12:30 p.m. MT—Register at: *https://tinyurl.com/bdfrrwsh*

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, Designated Federal Officer, (DFO) at *kfajota@usccr.gov* or by phone at (434) 515–2395.

SUPPLEMENTARY INFORMATION: Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Kayla Fajota (DFO) at *kfajota@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl2AAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Discussion of Topic Choice
IV. Public Comment
V. Adjournment

Dated: January 19, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01349 Filed 1–24–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Arizona Advisory Committee (Committee) to the Commission will hold a meeting via Webex on Wednesday, February 23, 2022, from 12:30 p.m. to 2:00 p.m. Mountain Time for the purpose of discussing potential civil rights topics to study.

DATES: *The meeting will be held on:*

- Wednesday, February 23, 2022, from 12:30 p.m.–2:00 p.m. Mountain Time

Access Information:

Wednesday, February 23th at 12:30 p.m. MT—Register at: *https://tinyurl.com/3vrvjf68.*

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, Designated Federal Officer, (DFO) at *kfajota@usccr.gov* or by phone at (434) 515–2395.

SUPPLEMENTARY INFORMATION: Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Kayla Fajota (DFO) at *kfajota@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl2AAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Introductions
III. Expectations and Ground Rules for the Committee
IV. Overview of Project Process
V. Discussion of Topic Choice
VI. Public Comment
VII. Adjournment

Dated: January 19, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01350 Filed 1–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Medical Exception Request Form

AGENCY: Department of Commerce.

ACTION: Notice; request for comment.

SUMMARY: The Department of Commerce (DOC), as part of its commitment to support the President's Executive Order

14043 of September 9, 2021, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees and the Safer Federal Workforce Task Force guidance,* is announcing an opportunity for public comment on a full clearance of a previous emergency approval that allowed the Department of Commerce (DOC) to collect information from individuals applying for medical exemption to the COVID–19 Mandatory Vaccinations as specified in the Agency Medical Exemption Form, Part 2. In accordance with the Paperwork Reduction Act of 1995 (PRA), 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 28, 2022.

ADDRESSES: Interested persons are invited to submit written comments to the Department of Commerce, PRA Clearance Officer at *PRAcomments@doc.gov.* All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Attn: Zack Schwartz, Chief of Staff to the Acting CFO and Assistant Secretary for Administration, Commerce Headquarters, at (202) 577–1769; or via email: *ZSchwartz@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Executive Order (E.O.) 14043, titled, ''Requiring Coronavirus Disease 2019 Vaccination for Federal Employees,'' requires all Federal employees, as defined in 5 U.S.C. 2105, to be vaccinated against COVID–19, with exceptions only as required by law. Requests for ''medical accommodation'' or ''medical exceptions'' will be treated as requests for a disability accommodation and evaluated and decided under applicable Rehabilitation Act standards for reasonable accommodation absent undue hardship to the agency. The agency will be required to keep confidential any medical information provided, subject to the applicable Rehabilitation Act standards. This medical exemption form is necessary for Commerce to determine legal exemptions to the vaccine requirement under the Rehabilitation Act. The Form ''Request for a Medical Exception to the COVID–19 Vaccine Requirement'' will be completed by employees who seek a medical exception to the Federal employee vaccine mandate, and by their personal medical providers.

To request a medical exemption from the COVID–19 vaccination requirement, an employee must complete Part 1 of the medical exemption form and their medical provider must complete Part 2. The Bureau's Reasonable Accommodation Coordinators would receive this form from the requester and use it to make a recommendation to the supervisor based on the medical information provided in the form.

The request for this collection of information is essential to continue the Department of Commerce's health and safety measures regarding the Federal Employee medical exemptions to the COVID–19 mandatory vaccinations.

II. Method of Collection

The Department of Commerce will collect this information by electronically, when possible, as well as by mail, fax, telephone, technical discussions; and customer experience activities such as feedback surveys, focus groups, user testing, and in-person interviews. Department of Commerce may also utilize observational techniques to collect this information.

III. Data

OMB Control Number: 0690–0036.

Form Number(s): None.

Type of Review: Regular submission; Extension of an already approved collection.

Affected Public: Federal employees and medical providers.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 167.

Estimated Total Annual Cost to Public: $9321.

Respondent's Obligation: Voluntary.

Legal Authority: Executive Order (E.O.) 14043.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–01431 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Foreign National Request Form

AGENCY: Office of Security (OSY), Office of the Secretary, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to the Office of Management and Budget (OMB).

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 28, 2022.

ADDRESSES: Direct all written comments to Eric M. Geddis, Program Manager, Department of Commerce at *egeddis@doc.gov,* or to *PRAcomments@doc.gov.* Please reference OMB Control Number 0690–0033 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information. All comments received are part of the public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Eric M. Geddis, Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230, (202) 482–8125, or *egeddis@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this collection is to gather information to mitigate variances in foreign access management program implementation and registration information requirements needed to reach risk-based determinations of physical and logical access by foreign national visitors and guests to Commerce facilities and resources. Due to the increasing diversity of foreign national participation in departmental programs, considerable efforts have been made to baseline requirements as a means to define uniform program standards as well as to expand current guidance beyond foreign visitor control to manage emerging risks associated with physical and logical access to the Department' s facilities and resources.

II. Method of Collection

This information is collected in both paper form and electronically.

III. Data

OMB Control Number: 0690–0033.

Form Number(s): 207–12–1.

Type of Review: Regular submission. Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 12,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

We are soliciting public comments to permit the Agency to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Agency, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–01428 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–01–2022]

Foreign-Trade Zone (FTZ) 38—Spartanburg County, South Carolina; Notification of Proposed Production Activity, BMW Manufacturing Company, LLC (Passenger Motor Vehicles), Spartanburg, South Carolina

BMW Manufacturing Company, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Spartanburg, South Carolina within Subzone 38A. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on January 13, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status component 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 component would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status component is plastic terminal battery caps (duty-free). The request indicates that the component is subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is March 7, 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: January 20, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–01394 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Khaldoun Hejazi, 1112 West Howe Street, Boise, ID 83706 Order Denying Export Privileges

On March 3, 2020, in the U.S. District Court for the District of Idaho, Khaldoun Hejazi (''Hejazi'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778) (''AECA''). Specifically, Hejazi was convicted of knowingly and willfully conspiring to export, and causing to be exported, firearms from the United States, which were designated as defense articles on the United States Munitions List, without having first obtained the required licenses or written approval from the U.S. Department of State. As a result of his conviction, the Court sentenced Hejazi to (1) 30 months in

prison, (2) three years of supervised released, (3) a $30,000 criminal fine, and (4) a $100 court assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''), the export privileges of any person who has been convicted of certain offenses, including, but not limited to, Section 38 of the AECA, may be denied for a period of up to ten (10) years from the date of his/her conviction. *See* 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Hejazi's conviction for violating Section 38 of the AECA. BIS provided notice and opportunity for Hejazi to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[1] While Hejazi contacted BIS indicating that he may submit a response, to date, BIS has not received a written submission from Hejazi.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Hejazi's export privileges under the Regulations for a period of five years from the date of Hejazi's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Hejazi had an interest at the time of his conviction.[2]

Accordingly, it is hereby ordered:

First, from the date of this Order until March 3, 2025, Khaldoun Hejazi, with a last known address of 1112 West Howe Street, Boise, ID 83706, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Hejazi by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Hejazi may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Hejazi and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until March 3, 2025.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–01427 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–DT–P

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2021).

[2] The Director, Office of Export Enforcement, is now the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–857]

Certain Softwood Lumber Products From Canada: Final Results of Antidumping Duty Administrative Review; 2019; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The Department of Commerce (Commerce) published notice in the **Federal Register** on December 2, 2021 in which Commerce announced the final results of the 2019 administrative reviews of the antidumping duty (AD) order on softwood lumber from Canada. This notice incorrectly excluded the name Fraserview Remanufacturing Inc., d.b.a. Fraserview Cedar Products.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of December 2, 2021, in FR Doc 2021–26149, on page 68473, in the third column, we will correct the name of the Exporter/Producer ''5. 752615 B.C Ltd'' by adding the name Fraserview Remanufacturing Inc., d.b.a. Fraserview Cedar Products to this name, such that it reads ''5. 752615 B.C Ltd; Fraserview Remanufacturing Inc., d.b.a. Fraserview Cedar Products.''

Background

On December 2, 2021, Commerce published in the **Federal Register** the final results of the 2019 administrative reviews of the AD order on softwood lumber from Canada.[1] We failed to include the name Fraserview Remanufacturing Inc., d.b.a. Fraserview Cedar Products in the list of exporters and producers under review.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended and 19 CFR 351.213(h).

Dated: January 19, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2022–01362 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–824]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Results of Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 10, 2021, the Department of Commerce (Commerce) published its notice of initiation and preliminary results of changed circumstances review (CCR) of the antidumping duty (AD) order on heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey). Commerce preliminarily determined that Ozdemir Boru Profil Sanayi ve Ticaret Sirketi (A.S.) (Ozdemir AS) is the successor-in-interest to Ozdemir Boru Profil Sanayi ve Ticaret Limited Sirketi (Ozdemir Ltd. Sti.), and, as a result, should be accorded the same treatment previously accorded to that company. We invited interested parties to comment on the preliminary results. As no parties submitted comments, and there is no other information or evidence on the record calling into question our preliminary results, Commerce is making no changes to the preliminary results. For these final results, Commerce continues to find that Ozdemir AS is the successor-in-interest to Ozdemir Ltd. Sti.

DATES: Applicable January 25, 2022.

FOR FURTHER INFORMATION CONTACT: Samantha Kinney at (202) 482–2285, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2016, Commerce published the AD order on imports of HWR pipes and tubes from Turkey.[1] On November 2, 2021, Ozdemir AS requested that Commerce conduct an expedited CCR of the *Order* to determine that Ozdemir AS is the successor-in-interest to Ozdemir Ltd. Sti.[2] In its request, Ozdemir AS addressed the factors Commerce analyzes with respect to successor-in-interest determinations, and provided documentation in support.[3] Commerce received no comments from interested parties on Ozdemir AS's CCR request. On December 10, 2021, Commerce initiated a CCR and made preliminary findings that Ozdemir AS is the successor-in-interest to Ozdemir Ltd. Sti., and is entitled to Ozdemir Ltd. Sti.'s AD cash deposit rate with respect to entries of subject merchandise.[4] We provided interested parties 14 days from the date of publication of the *Preliminary Results* to submit case briefs and to request a public hearing. No interested parties submitted case briefs or requested a hearing.

Scope of the Order

The merchandise covered by the *Order* 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 merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

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 description of the scope of this *Order* is dispositive.

Final Results of Changed Circumstances Review

Because the record contains no information or evidence that calls into question the *Preliminary Results,* and because we received no comments from interested parties to the contrary, for the reasons stated in the *Preliminary Results,* Commerce continues to find that Ozdemir AS is the successor-in-interest to Ozdemir Ltd. Sti.

Instructions to U.S. Customs and Border Protection

Based on these final results, we will instruct U.S. Customs and Border Protection (CBP) not to collect estimated AD duties for shipments of subject merchandise that is both produced and exported by Ozdemir AS because this merchandise is excluded from the *Order.* For shipments of subject merchandise that is not both produced and exported by Ozdemir AS and is entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register**, we will instruct CBP to collect estimated AD duties at the current AD cash deposit rate for merchandise not both produced and

[1] *See Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review; 2019*, 86 FR 68471 (December 2, 2021).

[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) (*Order*).

[2] *See* Ozdemir AS's Letter, ''Request for Changed Circumstances Reviews,'' dated November 2, 2021 (Ozdemir AS's CCR Request).

[3] *Id.*

[4] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Notice of Initiation and Preliminary Results of Changed Circumstances Review,* 86 FR 70443 (December 10, 2021) (*Preliminary Results*). As stated in the *Preliminary Results,* entries of subject merchandise that are not both produced and exported by Ozdemir Ltd. Sti. have an applicable AD cash deposit rate. Entries that are both produced and exported by Ozdemir Ltd. Sti. are excluded from the *Order.* In the *Preliminary Results,* we determined that Ozdemir AS is the successor-in-interest to Ozdemir Ltd. Sti.

exported by Ozdemir Ltd. Sti. (*i.e.,* 35.66 percent). These cash deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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.

We are issuing and publishing these final results in accordance with sections 751(b) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 351.221(c)(3).

Dated: January 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–01363 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–821–830]

Granular Polytetrafluoroethylene Resin From the Russian Federation: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of granular polytetrafluoroethylene (PTFE) resin from the Russian Federation (Russia).

DATES: Applicable January 25, 2022.

FOR FURTHER INFORMATION CONTACT: George Ayache or William Horn, 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) 482–2623 or (202) 482–4868, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2021, Commerce published its *Preliminary Determination*.[1] On October 14, 2021, Commerce released its Post-Preliminary Analysis.[2] For a complete description of the events that followed the *Preliminary Determination* and Post-Preliminary Analysis, *see* the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The product covered by this investigation is granular PTFE resin from Russia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

No interested party commented on the scope of the investigation as it appeared in the *Preliminary Determination.* Therefore, no changes were made to the scope of the investigation.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II to this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on the facts otherwise available on the record pursuant to section 776(a) of the Act. Additionally, as discussed in the Issues and Decision Memorandum, because a respondent did not act to the best of its ability in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act. For further information, see the section ''Use of Facts Otherwise Available and Adverse Inferences'' in the accompanying Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[5]

Changes Since the Preliminary Determination and Post-Preliminary Analysis

Based on our review and analysis of the comments received from parties, we made certain changes to Joint Stock Company ''HaloPolymer'' (HaloPolymer)'s preliminary subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

We continue to determine the all-others rate using the individual estimated subsidy rate determined for HaloPolymer, the only individually

[1] *See Granular Polytetrafluoroethylene Resin from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 86 FR 35476 (July 6, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Post-Preliminary Analysis of Countervailing Duty Investigation,'' dated October 14, 2021 (Post-Preliminary Analysis).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Granular Polytetrafluoroethylene Resin from the Russian Federation,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See* Commerce's Letter, ''Revised Questionnaire in Lieu of On-Site Verification,'' dated November 8, 2021; *see also* HaloPolymer's Letter, ''In Lieu of Verification Questionnaire Response,'' dated November 15, 2021.

examined exporter/producer in this investigation, in accordance with section 705(c)(5)(A)(i) of the Act.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate *ad valorem* (percent)
Joint Stock Company "HaloPolymer" [6]	2.53
All Others	2.53

Disclosure

Commerce intends to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of the publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after July 6, 2021, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, effective November 3, 2021, we instructed CBP to discontinue the suspension of liquidation of all entries of subject merchandise, but to continue the suspension of liquidation of all entries of subject merchandise between July 6, 2021 and November 2, 2021.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of granular PTFE resin from Russia. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured or threatened with material injury. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: January 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product covered by this investigation is granular polytetrafluoroethylene (PTFE) resin. Granular PTFE resin is covered by the scope of this investigation whether filled or unfilled, whether or not modified, and whether or not containing co-polymer, additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for granular PTFE resin is C2F4, and the Chemical Abstracts Service (CAS) Registry number is 9002–84–0.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by filling, modifying, compounding, packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the granular PTFE resin.

The product covered by this investigation does not include dispersion or coagulated dispersion (also known as fine powder) PTFE.

PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of this investigation.

Granular PTFE resin is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3904.61.0010. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000. Although the HTSUS subheadings and CAS Number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Use of Facts Otherwise Available and Adverse Inferences
IV. Subsidies Valuation
V. Benchmarks and Interest Rates
VI. Analysis of Programs
VII. Analysis of Comments
  Comment 1: Whether the Natural Gas for Less than Adequate Remuneration (LTAR) Program Is Countervailable
  Comment 2: Whether Commerce Should Use Kazakh Export Prices as a Benchmark for the Natural Gas for LTAR Calculation
  Comment 3: Whether the Preferential Loans Provided by the State-Controlled Banks Program Are Countervailable
VIII. Recommendation

[FR Doc. 2022–01337 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–DS–P

[6] Commerce has found the following companies to be cross-owned with HaloPolymer: Limited Liability Company ''HaloPolymer Kirovo-Chepetsk,'' Joint Stock Company ''HaloPolymer Perm,'' and URALCHEM JSC.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–900]

Granular Polytetrafluoroethylene Resin From India: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of granular polytetrafluoroethylene (PTFE) resin from India.

DATES: Applicable January 25, 2022.

FOR FURTHER INFORMATION CONTACT: Josh Simonidis or Janae Martin, 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) 482–0608 or (202) 482–0238, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2021, Commerce published its *Preliminary Determination.*[1] On October 1, 2021, Commerce released its Post-Preliminary Analysis.[2] For a complete description of the events that followed the *Preliminary Determination* and Post-Preliminary Analysis, *see* the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Period of Investigation

The period of investigation is April 1, 2019, through March 31, 2020.

Scope of the Investigation

The product covered by this investigation is granular PTFE resin from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

No interested party commented on the scope of the investigation as it appeared in the *Preliminary Determination.* Therefore, no changes were made to the scope of the investigation.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II to this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on the facts otherwise available on the record pursuant to section 776(a) of the Act. Additionally, as discussed in the Issues and Decision Memorandum, because the Government of India did not act to the best of its ability in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act. For further information, see the section ''Use of Facts Otherwise Available and Adverse Inferences'' in the accompanying Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[5]

Final Affirmative Determination of Critical Circumstances

In accordance with section 703(e) of the Act and 19 CFR 351.206, Commerce preliminarily determined that critical circumstances exist for Gujarat Fluorochemicals Limited (GFCL).[6] Commerce did not receive any comments in response to its preliminary determination with respect to critical circumstances. That determination remains unchanged, and a discussion of our final critical circumstances determination can be found in the Issues and Decision Memorandum.

Changes Since the Preliminary Determination and Post-Preliminary Analysis

Based on our review and analysis of the comments received from parties, we made certain changes to GFCLs preliminary subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

We continue to determine the all-others rate using the individual estimated subsidy rate determined for GFCL, the only individually examined exporter/producer in this investigation, in accordance with section 705(c)(5)(A)(i) of the Act.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate *ad valorem* (percent)
Gujarat Fluorochemicals Limited[7]	31.89
All Others	31.89

Disclosure

Commerce intends to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of the publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

[1] *See Granular Polytetrafluoroethylene Resin from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 86 FR 35479 (July 6, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Post-Preliminary Analysis of Countervailing Duty Investigation,'' dated October 4, 2021 (Post-Preliminary Analysis).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Granular Polytetrafluoroethylene Resin from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See* Commerce's Letter, ''In Lieu of On-Site Verification Questionnaire,'' dated October 21, 2021; *see also* GFCL's Letter, ''In Lieu of Verification Questionnaire Response,'' dated November 15, 2021.

[6] *See Preliminary Determination* PDM at 3–5.

[7] Commerce has found the following companies to be cross-owned with GFCL: Inox Leasing Finance Limited and Inox Wind Limited.

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after April 7, 2021, which is 90 days before the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, effective November 3, 2021, we instructed CBP to discontinue the suspension of liquidation of all entries of subject merchandise, but to continue the suspension of liquidation of all entries of subject merchandise between April 7, 2021 and November 2, 2021.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of granular PTFE resin from India. As Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured or threatened with material injury. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: January 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The product covered by this investigation is granular polytetrafluoroethylene (PTFE) resin. Granular PTFE resin is covered by the scope of this investigation whether filled or unfilled, whether or not modified, and whether or not containing co-polymer, additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for granular PTFE resin is C2F4, and the Chemical Abstracts Service (CAS) Registry number is 9002–84–0.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by filling, modifying, compounding, packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the granular PTFE resin.

The product covered by this investigation does not include dispersion or coagulated dispersion (also known as fine powder) PTFE.

PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of this investigation.

Granular PTFE resin is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3904.61.0010. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000. Although the HTSUS subheadings and CAS Number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Use of Facts Otherwise Available and Adverse Inferences
IV. Final Determination of Critical Circumstances
V. Subsidies Valuation
VI. Analysis of Programs
VII. Analysis of Comments
  Comment 1: Whether Production of Wind Energy Supplied by Inox Wind Limited Is Primarily Dedicated
  Comment 2: Whether the Mumbai Benchmark Is Comparable in Calculating State Industrial Development Corporation's (SIDC's) Provision of Land for Less Than Adequate Remuneration (LTAR) Benefits
  Comment 3: Whether the Mumbai Benchmark Is Aberrational in Calculating SIDC's Provision of Land for LTAR Benefits
  Comment 4: Whether Commerce Should Correct Its Land Benefit Calculations
  Comment 5: Whether Commerce Should Apply Adverse Facts Available to the Programs Under the State Government of Madhya Pradesh Industrial Promotion Act and the Merchandise Export from India Scheme Program
  Comment 6: Whether the Advanced Authorization Program and Duty Drawback Programs Are Countervailable
  Comment 7: Whether Renewable Energy Certificates Provide a Financial Contribution
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VIII. Recommendation

[FR Doc. 2022–01338 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Notice of Amended Final Results of Countervailing Duty Administrative Review; 2019; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The Department of Commerce (Commerce) published a notice in the **Federal Register** of January 10, 2022, in which it issued the amended final results of the 2019 administrative review of the countervailing duty (CVD) order on certain softwood lumber products from Canada. This notice inadvertently omitted a company, Carter

Forest Products Inc. (Carter), that was subject to the CVD review.

FOR FURTHER INFORMATION CONTACT: John Hoffner, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3315.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 10, 2022, in FR Doc. 2022–00212, on page 1116 in the second column, Commerce did not list a company named ''Carter Forest Products Inc.''

Background

On April 8, 2020, Commerce indicated in the **Federal Register** that Carter Forest Products Inc. (Carter) was a firm subject to the CVD administrative review on certain softwood lumber products from Canada covering the period of review (POR) of January 1, 2019, through December 31, 2019.[1] In the final results of the CVD administrative review covering the 2019 POR, Commerce inadvertently omitted Carter from Appendix II as being among the firms subject to the review that received the non-selected subsidy rate that Commerce applied to those firms not individually-examined.[2] Additionally, Commerce also omitted Carter in the appendix to the notice of *Amended Final Results* as being among the firms subject to the review that received the non-selected subsidy rate that Commerce applied to those firms not individually examined.[3] With the issuance of this notice of correction, we confirm that Carter is included among the firms subject to the non-selected rate in CVD administrative review covering calendar year 2019.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 19730, 19740 (April 8, 2020).

[2] *See Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review, 2019,* 86 FR 68467, 68470 (December 2, 2021) (*Final Results*).

[3] *See Certain Softwood Lumber Products from Canada: Notice of Amended Final Results of the Countervailing Duty Administrative Review, 2019,* 87 FR 1114 (January 10, 2022) (*Amended Final Results*).

Dated: January 19, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2022–01361 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–858, A–791–827]

Lemon Juice From Brazil and South Africa: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 19, 2022.

FOR FURTHER INFORMATION CONTACT: Dakota Potts (Brazil) or Ariela Garvett (South Africa); AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0223 and (202) 482–3609, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On December 30, 2021, the Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of lemon juice from Brazil and South Africa filed in proper form on behalf of Ventura Coastal, LLC (the petitioner), a domestic producer of lemon juice.[1]

On January 4 and 11, 2022, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[2] The petitioner filed responses to the supplemental questionnaires on January 6, 10, and 13, 2022.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of lemon juice from Brazil and South Africa 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 lemon juice industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.[4]

Periods of Investigation

Because the Petitions were filed on December 30, 2021, the period of investigation (POI) for these LTFV investigations is October 1, 2020, through September 30, 2021, pursuant to 19 CFR 351.204(b)(1).[5]

Scope of the Investigations

The product covered by these investigations is lemon juice from Brazil and South Africa. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On January 4, 10, and 12, 2022, Commerce requested further information and clarification from the petitioner regarding the proposed scope, to ensure that the scope language in the Petitions is an accurate reflection of the

[1] *See* Petitioner's Letter, ''Antidumping Duty Petition on Behalf of Ventura Coastal LLC: Lemon Juice from Brazil and South Africa,'' dated December 30, 2021 (Petitions).

[2] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Lemon Juice from Brazil and South Africa: Supplemental Questions,'' dated January 4, 2022 (General Issues Questionnaire); ''Petition for the Imposition of Antidumping Duties on Imports of Lemon Juice from Brazil: Supplemental Questions,'' dated January 4, 2022; ''Petition for the Imposition of Antidumping Duties on Imports of Lemon Juice from South Africa: Supplemental Questions,'' dated January 4, 2022; ''Petition for the Imposition of Antidumping Duties on Imports of Lemon Juice from Brazil: Second Supplemental Questions,'' dated January 11, 2022; and ''Petition for the Imposition of Antidumping Duties on Imports of Lemon Juice from South Africa: Supplemental Questions,'' dated January 11, 2022.

[3] *See* Petitioner's Letters, ''Lemon Juice from Brazil and South Africa: Petitioner's Response to General Issues Questionnaire,'' dated January 6, 2022 (General Issues Supplement); ''Lemon Juice from Brazil: Petitioner's Response to General Issues Questionnaire,'' dated January 6, 2022 and ''Lemon Juice from Brazil: Petitioner's Response to Supplemental Questionnaire (Q5),'' dated January 10, 2022 (collectively, First Brazil AD Supplement); ''Lemon Juice from Brazil: Petitioner's Response to Second Supplemental Questionnaire,'' dated January 13, 2022 (Second Brazil AD Supplement); ''Lemon Juice from Brazil {*sic*}: Petitioner's Response to General Issues Questionnaire,'' dated January 6, 2022 and ''Lemon Juice from South Africa: Petitioner's Response to Supplemental Questionnaire (Q11),'' dated January 10, 2022 (collectively, First South Africa AD Supplement); and ''Lemon Juice from South Africa: Petitioner's Response to Second Supplemental Questionnaire,'' dated January 13, 2022 (Second South Africa AD Supplement).

[4] *See infra,* section titled ''Determination of Industry Support for the Petitions.''

[5] *See* 19 CFR 351.204(b)(1).

product for which the domestic industry is seeking relief.[6] On January 6, 11, and 13, 2022, the petitioner revised the scope.[7] The description of the merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.[8]

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period 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 parties submit such comments by 5:00 p.m. Eastern Time (ET) on February 8, 2022, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on February 18, 2022, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of these investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent investigations.

[6] *See* General Issues Questionnaire; *see also* Memoranda, ''Phone Call with Counsel to the Petitioner,'' dated January 10, 2022; and ''Phone Call with Counsel to the Petitioner'' dated January 12, 2022.

[7] *See* General Issues Supplement at Exhibit SI–15; *see also* Petitioner's Letter, ''Lemon Juice from Brazil and South Africa: Petitioner's Response to Scope Issues Raised in 1/10/22 Phone Call with Counsel,'' dated January 11, 2022 at Exhibit 2SI–15; Second Brazil AD Supplement at 1 and Exhibit 3SI–15; and Second South Africa AD Supplement at 1 and Exhibit 3SI–15.

[8] We note that the third paragraph of the scope of these investigations references certain lemon juice that is blended with certain lemon juice from sources not subject to these investigations. While Commerce has adopted this scope language for the purposes of initiation, we invite parties to these proceedings to comment on this scope language. In particular, we invite parties to focus on administrability and circumvention concerns.

[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'').

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date on which it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of lemon juice 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 lemon juice, 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 February 8, 2022, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on February 18, 2022, which is ten calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

[11] *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.*

Determination of Industry Support for the Petitions

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,[12] 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.[13]

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.*

Continued

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 investigations.[14] Based on our analysis of the information submitted on the record, we have determined that lemon juice, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

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 Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided the total volume of lemons that it processed during the most recently completed lemon marketing season (August 1, 2020—July 31, 2021).[16] The petitioner also provided the total volume of lemons processed in the United States during the 2020–21 lemon marketing season, as reported by the U.S. Department of Agriculture's National Agricultural Statistics Service (USDA NASS) in its September 2021 *Citrus Fruits: 2021 Summary.*[17] The petitioner then compared its own volume of lemons processed to the total volume of lemons processed as reported by USDA NASS for the 2020–21 lemon marketing season.[18] We relied on data provided by the petitioner for purposes of measuring industry support.[19]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions. First, the Petitions 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). 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 Petitions account for at least 25 percent of the total production of the domestic like product. 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 Petitions 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 Petitions. Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

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.[20]

The petitioner contends that the industry's injured condition is illustrated by an absolute and relative increase in the volume of subject imports; increasing market share of subject imports at the expense of the domestic industry; price reductions and decline in the unit value of domestic shipments; decreased profitability; declining sales; decreased capacity utilization; and the magnitude of the alleged dumping margins.[21] 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.[22]

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 these LTFV investigations of imports of lemon juice from Brazil and South Africa. 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 country-specific AD initiation checklists.

U.S. Price

For Brazil and South Africa, the petitioner established U.S. price on the average unit value of publicly available import data. The petitioner deducted expenses associated with inland freight incurred in Brazil and South Africa to calculate an ex-factory, or net, U.S. price.[23]

Normal Value Based on Constructed Value[24]

For Brazil and South Africa, the petitioner stated it was unable to obtain home-market or third-country prices for lemon juice to use as a basis for NV. Therefore, for Brazil and South Africa, the petitioner calculated NV based on constructed value (CV).[25]

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, selling, general, and administrative expenses, financial expenses, and profit.[26] For Brazil and South Africa, in calculating the cost of manufacturing, the petitioner relied on its own production experience and input consumption rates, valued using publicly available information applicable to each respective subject

v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[14] *See* Petitions at Volume I at 22–27 and Exhibits I–4 and I–5.

[15] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Country-Specific AD Checklists, ''Antidumping Duty Investigation Initiation Checklists: Lemon Juice from Brazil and South Africa,'' dated concurrently with this **Federal Register** notice and on file electronically via ACCESS (Country-Specific AD Initiation Checklists) at Attachment II, Analysis of Industry Support for the Antidumping Duty Petitions Covering Lemon Juice from Brazil and South Africa (Attachment II).

[16] *See* Petitions at Volume I at 3–4 and Exhibits I–1 and I–3; *see also* General Issues Supplement at 4–5 and Exhibit SI–1.

[17] *See* Petitions at Volume I at 4 and Exhibit I–2.

[18] *See* Petitions at Volume I at 3–4 and Exhibit I–3; *see also* General Issues Supplement at 4.

[19] *See* Petitions at Volume I at 3–5 and Exhibits I–1 through I–3; *see also* General Issues Supplement at 4–5 and Exhibit SI–1.

[20] *See* Petitions at Volume I at 17, 29–30 and Exhibit I–10.

[21] *See* Petitions at Volume I at 17, 28–37, Exhibits I–4, I–5, I–9, I–10, I–12 through I–14; *see also* General Issues Supplement at 5.

[22] *See* Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petitions Covering Lemon Juice from Brazil and South Africa (Attachment III).

[23] *See* Country-Specific AD Initiation Checklists.

[24] In accordance with section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the CV 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.

[25] *See* Country-Specific AD Initiation Checklists.

[26] *Id.*

country.[27] For Brazil and South Africa, in calculating selling, general, and administrative expenses, financial expenses, and profit ratios (where applicable), the petitioner relied on the 2020 financial statements of a producer of lemon juice in Brazil, and the 2020–2021 financial statements of a diversified food and beverage company that produces products incorporating lemon juice in South Africa.[28]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of lemon juice from Brazil and South Africa are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of U.S. price to CV in accordance with section 773 of the Act, the estimated dumping margins for lemon juice concerning each of the countries covered by this initiation are as follows: (1) Brazil—222.16 percent; and (2) South Africa—97.15 percent.[29]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating these LTFV investigations to determine whether imports of lemon juice from Brazil and South Africa 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 determinations no later than 140 days after the date of this initiation.

Respondent Selection

In the Petitions, the petitioner identified two companies in Brazil and five companies in South Africa as producers and/or exporters of lemon juice.[30] With respect to Brazil [31] and South Africa, following standard practice in LTFV investigations involving market economy countries, in the event that Commerce determines that the number 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 subheadings listed in the ''Scope of the Investigations,'' in the appendix.

On January 11 and 12, 2022, Commerce released CBP data on imports of lemon juice from South Africa and Brazil, respectively, under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days after the publication date of the notice of initiation of these investigations.[32] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Comments on CBP data and respondent selection 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. 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 *https://enforcement.trade.gov/apo.*

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Brazil and South Africa via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of lemon juice from Brazil and/or South Africa are materially injuring, or threatening material injury to, a U.S. industry.[33] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[34] Otherwise, these LTFV investigations 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 [35] 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.[36] 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 these investigations.

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

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *See* Petitions at Volume I at 16 and Exhibit I–8; *see also* General Issues Supplement at 1.

[31] The petitioner states that it relied on its own market knowledge, company data from Descartes Datamyne, and internet research to identify producers and/or exporters of lemon juice in Brazil. *See* Petitions at Volume I at 16 n.39. The Petitions do not include supporting information from independent, third-party sources to support the petitioner's identification of the two Brazilian companies as the only known producers and/or exporters of lemon juice in Brazil. Accordingly, we intend to use CBP data to select mandatory respondents in the Brazil investigation.

[32] *See* Memoranda, ''Antidumping Duty Petition on Imports of Lemon Juice from South Africa: Release of U.S. Customs and Border Protection Data,'' dated January 11, 2022; and ''Antidumping Duty Petition on Imports of Lemon Juice from Brazil: Release of U.S. Customs and Border Protection Data,'' dated January 12, 2022.

[33] *See* section 733(a) of the Act.

[34] *Id.*

[35] *See* 19 CFR 351.301(b).

[36] *See* 19 CFR 351.301(b)(2).

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), set 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 section D questionnaire response.

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, we 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, we 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; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review Commerce's regulations concerning factual information prior to submitting factual information in these investigations.[37]

Certification Requirements

Any party submitting factual information in an AD or countervailing duty (CVD) proceeding must certify to the accuracy and completeness of that information.[38] Parties must use the certification formats provided in 19 CFR 351.303(g).[39] Commerce intends to reject factual submissions if the 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 these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by the filing a letter of appearance as discussed). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[40]

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: January 19, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The product covered by these investigations is certain lemon juice. Lemon juice is covered: (1) With or without addition of preservatives, sugar, or other sweeteners; (2) regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity; (3) regardless of the grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), the size of the container in which packed, or the method of packing; and (4) regardless of the U.S. Department of Agriculture Food and Drug Administration (FDA) standard of identity (as defined under 19 CFR 146.114 *et seq.*) (*i.e.,* whether or not the lemon juice meets an FDA standard of identity).

Excluded from the scope are: (1) Lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers; and (2) beverage products, such as lemonade, that contain 20 percent or less lemon juice as an ingredient by actual volume. ''Retail-sized containers'' are defined as lemon juice products sold in ready-for-sale packaging (*e.g.,* clearly visible branding, nutritional facts listed, *etc.*) containing up to 128 ounces of lemon juice by actual volume.

The scope also includes certain lemon juice that is blended with certain lemon juice from sources not subject to these investigations. Only the subject lemon juice component of such blended merchandise is covered by the scope of these investigations. Blended lemon juice is defined as certain lemon juice with two distinct component parts of differing country(s) of origin mixed together to form certain lemon juice where the component parts are no longer individually distinguishable.

The product subject to these investigations is currently classifiable under subheadings 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2022–01411 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–899]

Granular Polytetrafluoroethylene Resin From India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of granular polytetrafluoroethylene (PTFE) resin from India are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable January 25, 2022.

FOR FURTHER INFORMATION CONTACT: Alexis Cherry or Katherine 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) 482–0607 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2021, Commerce published its preliminary determination in the LTFV investigation of granular PTFE resin from India, in which we also postponed the final determination until January 18, 2022.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] The

[37] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[38] *See* section 782(b) of the Act.

[39] *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 *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[40] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[1] *See Granular Polytetrafluoroethylene Resin from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 49299 (September 2, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative

Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The product covered by this investigation is granular PTFE resin from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

No interested party commented on the scope of the investigation as it appeared in the *Preliminary Determination.* Therefore, no changes were made to the scope of the investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II to this notice.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[3]

Final Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determined that critical circumstances exist for Gujarat Fluorochemicals Limited (GFCL) and for all other producers and exporters.[4] Commerce did not receive any comments in response to its preliminary determination with respect to critical circumstances. Based on our preliminary analysis, we continue to find that critical circumstances exist in the final determination.

Changes Since the Preliminary Determination

Based on the comments received from interested parties and record information, we made no changes to our preliminary weighted-average dumping margin calculations for GFCL.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for GFCL, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for GFCL is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (Adjusted for Subsidy Offsets) (percent)
Gujarat Fluorochemicals Limited	13.09	10.01
All Others	13.09	10.01

Disclosure

Normally, Commerce discloses to the parties in a proceeding the calculations that it performed in connection with the final determination in accordance with 19 CFR 351.224(b). However, because we made no changes to our preliminary weighted-average dumping margin calculations for GFCL, there are no calculations to disclose for this final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of granular PTFE resin from India, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after September 2, 2021, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Section 735(c)(4) of the Act provides that if there is an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. As noted above, Commerce finds that critical circumstances exist for imports of subject merchandise

Determination in the Less-Than-Fair-Value Investigation of Granular Polytetrafluoroethylene Resin from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Commerce's Letter, ''In Lieu of On-Site Verification Questionnaire,'' dated September 14, 2021; s*ee also* GFCL's Letter, ''Gujarat Fluorochemicals Limited's Response to Questionnaire In-Lieu of On-Site Verification,'' dated September 22, 2021.

[4] For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* Preliminary Determination Memorandum at 13–16.

produced and/or exported by GFCL and by all other producers and exporters. Therefore, in accordance with section 735(c)(4) of the Act, suspension of liquidation shall continue to apply to unliquidated entries of subject merchandise produced and/or exported by GFCL and by all other producers and exporters that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date of publication of the *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the respondent listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

In the event that a countervailing duty (CVD) order is issued, and suspension of liquidation is resumed in the companion CVD investigation on granular PTFE resin from India, Commerce will instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion CVD investigation, and so long as suspension of liquidation continues under this antidumping duty (AD) investigation, the cash deposit rates for this AD investigation will be the rates identified in the estimated weighted-average dumping margin column in the rate chart, above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of this final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of granular PTFE resin from India no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an AD order directing CBP to assess, upon further instruction by Commerce, AD duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: January 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product covered by this investigation is granular polytetrafluoroethylene (PTFE) resin. PTFE is covered by the scope of this investigation whether filled or unfilled, whether or not modified, and whether or not containing co-polymer, additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for PTFE is C2F4, and the Chemical Abstracts Service Registry number is 9002–84–0.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by filling, modifying, compounding, packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the granular PTFE.

The product covered by this investigation does not include dispersion or coagulated dispersion (also known as fine powder) PTFE.

PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of this investigation.

Granular PTFE is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3904.61.0010. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000. Although the HTSUS subheadings and CAS Number are provided for convenience and Customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Discussion of the Issues
Comment 1: U.S. Movement Expenses
Comment 2: Constructed Export Price (CEP) Offset
Comment 3: Non-Prime Product Costing
Comment 4: Financial Expense Rate
Comment 5: Restructuring Expenses
IV. Recommendation

[FR Doc. 2022–01339 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–829]

Granular Polytetrafluoroethylene Resin From the Russian Federation: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of granular polytetrafluoroethylene (PTFE) resin from the Russian Federation (Russia) are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable January 25, 2022.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–4868, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2021, Commerce published its preliminary determination in the LTFV investigation of granular PTFE resin from Russia, in which we also postponed the final determination until January 18, 2022.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] 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.*

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The product covered by this investigation is granular PTFE from Russia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

No interested party commented on the scope of the investigation as it appeared in the *Preliminary Determination.* Therefore, no changes were made to the scope of the investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II to this notice.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[3]

Changes Since the Preliminary Determination

Based on the comments received from interested parties and record information, we made no changes to our preliminary weighted-average dumping margin calculations for HaloPolymer.[4] For a discussion of the comments received, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for HaloPolymer, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for HaloPolymer is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Halopolymer[5]	17.99	17.36
All Others	17.99	17.36

Disclosure

Normally, Commerce discloses to the parties in a proceeding the calculations that it performed in connection with the final determination in accordance with 19 CFR 351.224(b). However, because we made no changes to our preliminary weighted-average dumping margin calculations for HaloPolymer, there are no calculations to disclose for this final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of granular

[1] *See Granular Polytetrafluoroethylene Resin from the Russian Federation: Preliminary Affirmative Determination of Sales at the Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 49297 (September 2, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Granular Polytetrafluoroethylene Resin from the Russian Federation,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Commerce's Letter, ''Antidumping Duty Investigation of Granular PTFE Resin from Russia: Supplemental Questionnaire in Lieu of On-Site Verification,'' dated September 16, 2021.

[4] HaloPolymer OJSC, HaloPolymer Kirovo-Chepetsk, LLC (HPKC), HaloPolymer Perm, OJSC (HPP), HaloPolymer Trading, Inc. (HPTR), Limited Liability Company Trading House HaloPolymer (HPTH), and Limited Liability Company First Fluoroplastic Plant (FFP) (collectively, HaloPolymer).

[5] The final rate calculated applies to subject merchandise produced by HPKC, HPP, and FFP and exported by either HPTH or HaloPolymer. *See Preliminary Determination,* 86 FR 49297, 49298.

PTFE resin from Russia, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after September 2, 2021, the date of publication of the *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

In the event that a countervailing duty (CVD) order is issued, and suspension of liquidation is resumed in the companion CVD investigation on granular PTFE resin from Russia, Commerce will instruct CBP to require, for this antidumping duty (AD) investigation, cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion CVD investigation, and so long as suspension of liquidation continues under this AD investigation, the cash deposit rates for this AD investigation will be the rates identified in the estimated weighted-average dumping margin column in the rate chart, above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of granular PTFE from Russia no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an AD order directing CBP to assess, upon further instruction by Commerce, AD duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: January 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product covered by this investigation is granular polytetrafluoroethylene (PTFE) resin. Granular PTFE resin is covered by the scope of this investigation whether filled or unfilled, whether or not modified, and whether or not containing co-polymer, additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for granular PTFE resin is C2F4, and the Chemical Abstracts Service (CAS) Registry number is 9002–84–0.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by filling, modifying, compounding, packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the granular PTFE resin.

The product covered by this investigation does not include dispersion or coagulated dispersion (also known as fine powder) PTFE.

PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of this investigation.

Granular PTFE resin is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3904.61.0010. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000. Although the HTSUS subheadings and CAS Number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Discussion of the Issues
Comment 1: Whether HaloPolymer Failed to Report Complete Costs and Whether Adverse Facts Available (AFA) or Facts Available Should Be Applied to Determine HaloPolymer's Costs
Comment 2: Whether HaloPolymer Accurately Reported Price Adjustments
IV. Recommendation

[FR Doc. 2022–01335 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB642]

Research Track Assessment for Gulf of Maine Haddock

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will convene the Research Track Assessment Peer Review Meeting for the purpose of reviewing Gulf of Maine haddock stock. The Research Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting

stock assessment results to managers for fish stocks in the offshore U.S. and Canadian waters of the northwest Atlantic. Assessments are prepared by the research track working group and reviewed by an independent panel of stock assessment experts from the Center of Independent Experts (CIE). The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Research Track Assessment Peer Review Meeting will be held from January 25, 2022–January 27, 2022. The meeting will conclude on January 27, 2022 at 3 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via WebEx.

Link: https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=mac73d9098b946224d02f64d3d429d0b3.

Meeting number (access code): 199 778 2220.

Meeting password: hZ3XXiStH28.

FOR FURTHER INFORMATION CONTACT: Michele Traver, phone: 508–257–1642; email: *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about research track assessment peer review, please visit the NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/research-track-stock-assessments.*

Daily Meeting Agenda—Research Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

Time	Topic	Presenter(s)	Notes
Tuesday, January 25, 2022			
10 a.m.–10:15 a.m. ..	Welcome/Logistics Introductions/Agenda/Conduct of Meeting.	Michele Traver, Assessment Process Lead. Russ Brown, PopDy ..... Branch Chief, Richard Merrick, Panel Chair.	
10:15 a.m.–11:45 a.m..	TOR #3	Charles Perretti	Survey Data.
11:45 a.m.–12 p.m. ..	Discussion/Summary	Review Panel.	
12 p.m.–12:15 p.m. ..	Public Comment	Public.	
12:15 p.m.–12:45 p.m..	Lunch.		
12:45 p.m.–2:15 p.m.	TOR #2	Charles Perretti	Catch Data.
2:15 p.m.–2:30 p.m.	Discussion/Summary	Review Panel.	
2:30 p.m.–2:45 p.m.	Public Comment	Public.	
2:35 p.m.–3 p.m.	Wrap up	Review Panel.	
3 p.m.	Adjourn.		
Wednesday, January 26, 2022			
10 a.m.–10:15 a.m. ..	Welcome/Logistics	Michele Traver, Assessment Process Lead. Richard Merrick, Panel Chair.	
10:15 a.m.–11:15 a.m..	TORs #1, #9, and #10	Charles Perretti	Ecosystem, Recruitment Processes, and Density Dependent Growth.
11:15 a.m.–12:15 p.m..	TOR #4	Charles Perretti	Mortality, Recruitment and Biomass Estimates.
12:15 p.m.–12:30 p.m..	Discussion/Summary	Review Panel.	
12:30 p.m.–12:45 p.m..	Public Comment	Public.	
12:45 p.m.–1:15 p.m.	Lunch.		
1:15 p.m.–2:15 p.m.	TORs #5 and #6	Charles Perretti	BRPs and Projections.
2:15 p.m.–2:30 p.m.	Discussion/Summary	Review Panel.	
2:30 p.m.–2:45 p.m.	Public Comment	Public.	
2:45 p.m.–3 p.m.	Wrap up	Review Panel.	
3 p.m.	Adjourn.		
Thursday, January 27, 2022			
10 a.m.–10:15 a.m. ..	Welcome/Logistics	Michele Traver, Assessment Process Lead. Richard Merrick, Panel Chair.	
10:15 a.m.–11:15 a.m..	TORs #8 and #7	Charles Perretti ..... Brian Linton	Alternative Assessment Approach and Research Recommendations.
11:15 a.m.–11:30 a.m..	Discussion/Summary	Review Panel.	
11:30 a.m.–11:45 a.m..	Public Comment	Public.	
11:45 a.m.–12:15 p.m..	Wrap up	Review Panel.	

Time	Topic	Presenter(s)	Notes
12:15 p.m.–12:45 p.m..	Lunch.		
12:45 p.m.–3 p.m.	Report Writing	Review Panel.	
3 p.m.	Adjourn.		

The meeting is open to the public; however, during the 'Report Writing' session on Thursday, January 27th, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email.

Dated: January 20, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 2022–01425 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB738]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee (SSC). See **SUPPLEMENTARY INFORMATION.**

DATES: The SSC meeting will be held via webinar on February 11, 2022, from 8:30 a.m. until 12:30 p.m. EST.

ADDRESSES:

Meeting address: The meeting will be held via webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public via webinar as it occurs. Webinar registration is required. Information regarding webinar registration will be posted to the Council's website at: *http://safmc.net/safmc-meetings/scientific-and-statistical-committee-meetings/* as it becomes available. The meeting agenda, briefing book materials, and online comment form will be posted to the Council's website two weeks prior to the meeting. Written comment on SSC agenda topics is to be distributed to the Committee through the Council office, similar to all other briefing materials. For this meeting, the deadline for submission of written comment is 12 p.m. EST February 11, 2022.

Agenda items:

- The SSC will review the SEDAR (Southeast Data Assessment and Review) 71 gag grouper rebuilding projections requested by the Council at their December 2021 meeting, and address other topics as needed.
- The SSC will provide guidance to staff and make recommendations for Council consideration as appropriate.

Multiple opportunities for public comment on agenda items will be provided during SSC meetings. Open comment periods will be provided at the start of the meeting and near the conclusion. Additional opportunities for comment on specific agenda items will be provided, as each item is discussed, between initial presentations and SSC discussion. Those interested in providing comment should indicate such in the manner requested by the Chair, who will then recognize individuals to provide comment.

Although non-emergency issues not contained in the meeting agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 20, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–01414 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Management Plan for the Kachemak Bay National Estuarine Research Reserve

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval of the revised management plan for the Kachemak Bay National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce approves the revised management plan for the Kachemak Bay National Estuarine Research Reserve in Alaska. In accordance with applicable Federal regulations, the University of Alaska—Anchorage's Alaska Center for Conservation Science revised the reserve's management plan, which replaces the plan previously approved in 2012.

ADDRESSES: The approved management plan is available at *https://accs.uaa.alaska.edu/kbnerr/,* or by sending an email to Bree Turner of NOAA's Office for Coastal Management, at *Bree.Turner@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Bree Turner of NOAA's Office for Coastal Management, email at *Bree.Turner@noaa.gov,* or phone at 206–526–4641.

SUPPLEMENTARY INFORMATION: Pursuant to 15 CFR 921.33(c), a State must revise the management plan for a research reserve at least every five years. Changes

to a reserve's management plan may be made only after receiving written approval from NOAA. NOAA approves changes to management plans via notice in the **Federal Register**.

On May 27, 2021, NOAA issued a notice in the **Federal Register** announcing a 30-day public comment period for the proposed revision of the management plan for the Kachemak Bay National Estuarine Research Reserve (86 FR 28576). Responses to written and oral comments received, and an explanation of how comments were incorporated into the final version of the revised management plan, are available in appendix D of the plan.

The management plan outlines the reserve's strategic goals and objectives; administrative structure; programs for conducting research and monitoring, education, and training; resource protection, restoration, and manipulation plans; public access and visitor use plans; consideration for future land acquisition; and facility development to support reserve operations. Since 2012, the reserve has undergone a significant State agency administration transition from the Alaska Department of Fish and Game's Division of Sport Fish to the University of Alaska-Anchorage's Alaska Center for Conservation Science. With the administrative transition, the reserve staff and programs have relocated from the Alaska Islands and Ocean Visitor Center to the reserve's field station modular office and bunkhouse. Due to the change in facilities, some of the education and training programs have changed, but many of the core research, monitoring, education, and training activities have remained the same. The revised management plan, once approved, would serve as the guiding document for the 372,000-acre Kachemak Bay National Estuarine Research Reserve for the next five years.

NOAA reviewed the environmental impacts of the revised management plan and determined that this action is categorically-excluded from further analysis under the National Environmental Policy Act, consistent with NOAA Administrative Order 216–6.

Authority: 16 U.S.C. 1451 *et seq.;* 15 CFR 921.33.

Keelin S. Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–01429 Filed 1–24–22; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0010]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Armed Forces Workplace and Equal Opportunity Survey; OMB Control Number 0704–WEOS.

Needs and Uses: Authorization for this research is found in 10 U.S.C., Sections 136, 1782, and 2358. The legislation requiring the Secretary of Defense to conduct this survey is codified in 10 U.S.C., Section 481 and the Fiscal Year 2003 National Defense Authorization Act. Specifically, the legal requirements require surveys to be conducted to solicit information on racial and ethnic issues, including issues relating to harassment and discrimination, and the climate in the armed forces for forming professional relationships among members of various racial and ethnic groups. Specifically, surveys shall be conducted to solicit information on the following:

- Indicators of positive and negative trends for professional and personal relationships among members of all racial and ethnic groups.
- The effectiveness of DoD policies designed to improve relationships among all racial and ethnic groups.
- The effectiveness of current processes for complaints on, and investigations into, racial and ethnic discrimination.

Information from the 2022 Workplace and Equal Opportunity Survey will be used by Office of the Under Secretary of Defense for Personnel and Readiness policy offices, the Military Departments, and Congress for program evaluation to assess and improve personnel policies, programs, practices, and training related to racial/ethnic relations in the military.

Affected Public: Individuals or households.

Annual Burden Hours: 180,500 hours.

Number of Respondents: 361,000.

Responses per Respondent: 1.

Annual Responses: 361,000.

Average Burden per Response: 30 minutes.

Frequency: Biennially.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01400 Filed 1–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0009]

Proposed Collection; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19/pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Survey of Reserve Component Spouses; OMB Control Number 0704–RCSS.

Needs and Uses: The DoD Survey of Reserve Component Spouses (RCSS) is the primary source for reliable and generalizable data on the effects of military life on military spouses and their families and the effectiveness of current programs and policies related to military families. The survey is designed to enhance understanding of how spouse and family resilience impact Reserve component force readiness and retention, and is also an indicator informing the effectiveness of programs and policies under the purview of DoD's Military Community and Family Policy Department. Without this biennial survey, DoD would not have current data to guide limited resources to the appropriate programs, policies, and services related to reserve component spouses, their families and ultimately Service members.

This survey provides an opportunity for military spouses to directly expand policy maker's knowledge by sharing opinions on issues that directly affect them. Success of current efforts, the impact of activations and deployments, and opportunities to identify areas of need are captured via this biennial survey. These survey results ensure that policy-making decisions are based on current and statistically reliable data regarding the lived experiences of Reserve component families.

Affected Public: Individuals or households.

Annual Burden Hours: 18,175 hours.

Number of Respondents: 72,700.

Responses per Respondent: 1.

Annual Responses: 72,700.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01404 Filed 1–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–HA–0012]

Proposed Collection; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency, 7700 Arlington Blvd., Falls

Church, VA 22042, Terry McDavid, 703–681–3645.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Medical Human Resources System internet; OMB Control Number 0720–0041.

Needs and Uses: The DoD is required to provide and account for personnel, medical training and readiness and to establish a joint strategy to justify Medical Resources for Readiness and Peacetime Care. In response, the Assistant Secretary of Defense, Health Affairs/TRICARE Management Activity and the Service Surgeon Generals of the Army, Navy and Air Force approved development of a single joint electronic database to provide visibility of and to support the preparedness of all Military Healthcare System (MHS) medical personnel (to meet national security emergencies). The Defense Medical Human Resources System internet (DMHRSi) is a DoD application that provides the MHS with a joint comprehensive enterprise human resource system with capabilities to manage human capital across the entire spectrum of medical facilities and personnel types.

Affected Public: Individuals or households.

Annual Burden Hours: 11,156.

Number of Respondents: 89,250.

Responses per Respondent: 1.

Annual Responses: 89,250.

Average Burden per Response: 7.5 minutes.

Frequency: On occasion.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01406 Filed 1–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0004]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Logistics Agency Headquarters, ATTN: Mr. Steven Nace, J349, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6221; or call (571) 767–6582.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: End-Use Certificate; DLA Form 1822; OMB Control Number 0704–0382.

Needs and Uses: The End-Use Certificate DLA Form 1822 is submitted by individuals prior to releasing export-controlled personal property out of DoD control. Export-controlled personal property are items listed on the United States Munitions Lists or Commerce Control List, and includes articles, items, technical data, technology or software. Transfers of export-controlled personal property out of DoD control may be in tangible and intangible forms. The information collected is for the purpose of determining bidder or transferee eligibility to receive export-controlled personal property, and to ensure that transferees comply with the terms of sale or Military Critical Technical Data Agreement regarding end-use of the property. This form is to be used by the DoD Components, other Federal agencies who have acquired DoD export-controlled personal property, and or their contractors prior to releasing export-controlled personal property out DoD or Federal agency control. End-use checks are required by the following: DoD Instruction 2030.08, ''Implementation of Trade Security Controls (TSCs) for Transfers of DoD Personal Property to Parties Outside DoD Control;'' DoDM 4160.28, ''DoD Demilitarization Manual, Vol. 1, 2, 3;'' and the DoDM 4160.21, Vol 1–4, Defense Materiel Disposition Manual.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Annual Burden Hours: 14,000.

Number of Respondents: 42,000.

Responses per Respondent: 1.

Annual Responses: 42,000.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

Respondents are individuals/businesses/contractors who receive defense property identified as U.S. Munitions List Items and Commerce Control List Items through: Purchase, exchange/trade sale, authorized transfer or donation. They are checked to determine if they are responsible, not debarred bidders, Specially Designated Nationals or Blocked Persons, or have not violated U.S. export laws. The form is available on the DoD DEMIL/Trade Security Controls web page, DLA Disposition Services usable property sales web page, General Services Administration auction web page, and Defense Contract Management Agency offices, FormFlow and ProForm.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01395 Filed 1–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–HA–0011]

Proposed Collection; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs

(OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Terry McDavid, 703–681–3645.

SUPPLEMENTARY INFORMATION: *Title; Associated Form; and OMB Number:* Diagnosis Related Groups Reimbursement Two Parts; OMB Control Number 0720–0017.

Needs and Uses: The Department of Defense Authorization Act, 1984, Public Law 98–94 amended Title 10, section 1079(j)(2)(A) of the U.S.C. and provided the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) with the statutory authority to reimburse institutional providers based on diagnosis-related groups (DRGs). The TRICARE/CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System and was implemented on October 1, 1987. The TRICARE/CHAMPUS DRG-based payments apply only to hospital's operating costs and do not include any amounts for hospitals' capital or direct medical education costs. Any hospital subject to the DRG-based payment system, except for children's hospitals (whose capital and direct medical education costs are incorporated in the children's hospital differential), who want to be reimbursed for allowed capital and direct medical education costs must submit a request for payment to the TRICARE/CHAMPUS contractor. The request allows TRICARE to collect the information necessary to properly reimburse hospitals for its share of these costs

Affected Public: Individuals or households.

Annual Burden Hours: 5,600.

Number of Respondents: 5,600.

Responses per Respondent: 1.

Annual Responses: 5,600.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01399 Filed 1–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0007]

Proposed Collection; Comment Request

AGENCY: National Guard Bureau (NGB), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the National Guard Bureau announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to National Guard, Manpower and Personnel Division (NG–J1), ATTN: LTC Tasleen Panton, 111 S George Mason Drive, Arlington, VA 22204, or call (703) 663–0193.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Services Support System; OMB Control Number 0704–0537.

Needs and Uses: The information collection requirement is necessary for the agency, its programs, and stakeholders, to ensure key activities may be associated with system-registrants for program management, accountability, reporting, and support purposes. Examples of the use of such information include: Validating program-specific and congressionally-mandated event registration and attendance; enabling users to login to system to facilitate outreach and communication activities; supporting Civilian Employer Information collection; and enabling leadership across the participating programs with oversight and reporting.

Affected Public: Individuals or households.

Annual Burden Hours: 4,690.
Number of Respondents: 281,400.
Responses per Respondent: 1.
Annual Responses: 281,400.
Average Burden per Response: 1 minute.
Frequency: On occasion.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01398 Filed 1–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0006]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Logistics Agency Information Operations, ATTN: Timothy Noll, 2001 Mission Drive, Suite 2, New Cumberland, PA 17070, or call (717) 982–9599.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Project Time Record System; OMB Control Number 0704–0452.

Needs and Uses: This collection of information is for the purpose of tracking Defense Logistics Agency (DLA) contractor workload/project activity, time and attendance, and labor distribution and data for analysis and reporting, management, and planning purposes. Additionally, the data allows government supervisors to maintain management records associated with the operations of contracts and to evaluate and monitor contractor performance and other matters concerning contracts. Government supervisors are able to monitor all aspects of a contract and resolve any discrepancy in hours billed to DLA. Records devoid of personal identifiers are used for extraction or compilation of data and reports for management studies and statistical analyses for use internally as required by the DoD.

Affected Public: Individuals or households.

Annual Burden Hours: 15,600.

Number of Respondents: 1,200.

Responses per Respondent: 52.

Annual Responses: 62,400.

Average Burden per Response: 15 minutes.

Frequency: Weekly.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01397 Filed 1–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–HA–0013]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency, 7700 Arlington Blvd., Falls

Church, VA 22042, Terry McDavid, 703–681–3645.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Assistance Reporting Tool; OMB Control Number 0720–0060.

Needs and Uses: The Assistance Reporting Tool (ART) is a secure web-based system that captures feedback on and authorization related to TRICARE benefits. Users are comprised of Military Health System (MHS) customer service personnel, to include Beneficiary Counseling and Assistance Coordinators, Debt Collection Assistance Officers, personnel, family support, recruiting command, case managers, and others who serve in a customer service support role. The ART is also the primary means by which Defense Health Agency-Great Lakes staff capture medical authorization determinations and claims assistance information for remotely located service members, line of duty care, and for care under the transitional care for Service-related conditions benefit. ART data reflects the customer service mission within the MHS: It helps customer service staff users prioritize and manage their case workload; it allows users to track beneficiary inquiry workload and resolution, of which a major component is educating beneficiaries on their TRICARE benefits.

Affected Public: Individuals or households.

Annual Burden Hours: 43,596.

Number of Respondents: 174,385.

Responses per Respondent: 1.

Annual Responses: 174,385.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01401 Filed 1–24–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0008]

Proposed Collection; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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.

DATES: Consideration will be given to all comments received by March 28, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05 Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exceptional Family Member Program Survey; OMB Control Number 0704–EFMS.

Needs and Uses: The Quick Compass survey of the Exceptional Family Member Program (EFMP) is a DoD-wide large-scale survey of active duty members that will be used to systematically evaluate active duty service member perceptions of the EFMP. This is the baseline administration of this survey. The survey will assess topics such as perceptions of the EFMP enrollment process, family support, and referrals. Data will be aggregated by appropriate demographics, including Service, and paygrade. In order to be able to meet reporting requirements for DoD leadership, the Military Services, and Congress, the survey needs to be completed by December 2022. Results will be used by the Military Services to evaluate their EFMP programs and will be reported to Congress.

Affected Public: Individuals or households.

Annual Burden Hours: 4,500 hours.

Number of Respondents: 18,000.

Responses per Respondent: 1.

Annual Responses: 18,000.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: January 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–01405 Filed 1–24–22; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting, February 9 and March 9, 2022

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 9, 2022. A business meeting will be held the following month on Wednesday, March 9, 2022. Both the hearing and the business meeting are open to the public. Both meetings will be conducted remotely. Details about the remote platform and how to attend will be posted on the Commission's website, *www.drbc.gov,* no later than January 28, 2022.

Public Hearing. The Commission will conduct the public hearing remotely on February 9, 2022, commencing at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges, and other projects that could have a substantial effect on the basin's water resources.

The list of projects scheduled for hearing, including project descriptions, will be posted on the Commission's website, *www.drbc.gov,* in a long form of this notice at least ten days before the hearing date.

Written comments on matters scheduled for hearing on February 9, 2022 will be accepted through 5:00 p.m. on February 14, 2022.

The public is advised to check the Commission's website periodically during the ten days prior to the hearing date, as items scheduled for hearing may be postponed if additional time is needed to complete the Commission's review. Items also may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is asked to be aware that the details of projects may change during the Commission's review, which is ongoing.

Public Meeting. The public business meeting on March 9, 2022 will begin at 10:30 a.m. and will include: Adoption of the Minutes of the Commission's December 8, 2021 business meeting; announcements of upcoming meetings and events; a report on hydrologic conditions; reports by the Executive Director and the Commission's General Counsel; and consideration of any items for which a hearing has been completed or is not required.

After all scheduled business has been completed and as time allows, the business meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission on any topic concerning management of the Basin's water resources outside the context of a duly noticed, on-the-record public hearing.

There will be no opportunity for additional public comment for the record at the March 9, 2022 business meeting on items for which a hearing was completed on February 9, 2022 or a previous date. Commission consideration on March 9, 2022 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Sign-Up for Oral Comment. Individuals who wish to comment on the record during the public hearing on February 9, 2022 or to address the Commissioners informally during the Open Public Comment portion of the meeting on March 9, 2022 as time allows, are asked to sign up in advance through EventBrite. Links to EventBrite for the public hearing and the business meeting are posted at *www.drbc.gov.* For assistance, please contact Ms. Patricia Hausler of the Commission staff, at *patricia.hausler@drbc.gov.*

Addresses for Written Comment. Written comment on items scheduled for hearing may be made through the Commission's web-based comment system, a link to which is provided at *www.drbc.gov.* Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged. Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628–0360. For assistance, please contact Patricia Hausler at *patricia.hausler@drbc.gov.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Denise McHugh, 609–883–9500, ext. 240. For other questions concerning hearing items, please contact David Kovach, Project Review Section Manager at 609–883–9500, ext. 264.

Authority. Delaware River Basin Compact, Public Law 87–328, Approved September 27, 1961, 75 Statutes at Large, 688, sec. 14.4.

Dated: January 19, 2022.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2022–01412 Filed 1–24–22; 8:45 am]

BILLING CODE P

DEPARMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Open Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of meeting.

SUMMARY: This notice sets forth the agenda, time, and instructions to access or participate in the February 23–24, 2022 virtual meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) and provides information to members of the public regarding the meeting, including requesting to make oral comments. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act (FACA) and section 114(d)(1)(B) of the Higher Education Act of 1965, as amended (HEA).

DATES: The virtual NACIQI meeting will be held on February 23–24, 2022, from 10:00 a.m. to 5:00 p.m., Eastern Standard Time each day.

FOR FURTHER INFORMATION CONTACT: George Alan Smith, Executive Director/Designated Federal Official, NACIQI, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C–159, Washington, DC 20202, telephone: (202) 453–7757. Email: *George.Alan.Smith@ed.gov.*

SUPPLEMENTARY INFORMATION:

NACIQI's Statutory Authority and Function: NACIQI is established under section 114 of the HEA. NACIQI advises the Secretary of Education with respect to:

- The establishment and enforcement of the standards of accrediting agencies or associations under subpart 2, part H, Title IV of the HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV of the HEA and part C, subchapter I, chapter 34, Title 42, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary of Education may prescribe by regulation.

You may register for the meeting on your computer using the link below. After you register you will receive a confirmation email containing personalized participation links for each day of the two-day meeting. Dial-in numbers may be requested on each day of the meeting between 8:45 a.m.-9:45 a.m. Eastern Standard Time by emailing *Monica.Freeman@ed.gov.*

Registration Link: https://naciqiwintermeeting.eventbrite.com.

Meeting Agenda: Agenda items for the February 23–24, 2022 meeting are listed below.

Application for Renewal of Recognition

1. American Podiatric Medical Association, Council on Podiatric Medical Education. Scope of recognition: The accreditation and preaccreditation (''Provisional Accreditation'') throughout the United States of freestanding colleges of podiatric medicine and programs of podiatric medicine, including first professional programs leading to the degree of Doctor of Podiatric Medicine.

2. The Council on Chiropractic Education. Scope of recognition: The accreditation of programs leading to the Doctor of Chiropractic degree and single-purpose institutions offering the Doctor of Chiropractic program.

3. Commission on English Language Program Accreditation. Scope of recognition: The accreditation of postsecondary, non-degree-granting English language programs and institutions in the United States including those programs offered via distance education.

4. Joint Review Committee on Education in Radiologic Technology. Scope of recognition: The accreditation of educational programs in radiography, magnetic resonance, radiation therapy, and medical dosimetry, including those offered via distance education, at the certificate, associate, and baccalaureate levels.

5. North Dakota Board of Nursing. Scope of recognition: Recognized for the Approval of Nurse Education in the State of North Dakota.

Administration Policy Update

Undersecretary James Kvaal will discuss the Administration's higher education policy priorities.

Accreditation Dashboard

NACIQI members will discuss the use of the Department of Education's accreditation dashboard.

NACIQI Policy Discussion

In addition to its review of accrediting agencies and State approval agencies for Secretarial recognition, there will be time for Committee discussions regarding any of the categories within NACIQI's statutory authority in its capacity as an advisory committee.

Public Comments

Submission of requests to make an oral comment regarding a specific accrediting agency under review, or to make an oral comment or written statement regarding other issues within the scope of NACIQI's authority: Opportunity to submit a written statement regarding a specific accrediting agency under review was solicited by a previous **Federal Register** notice published on January 22, 2021 (*86 FR 6638*). The period for submission of such statements is now closed. Additional written comments regarding a specific agency or state approval agency under review will not be accepted at this time. However, members of the public may submit written statements regarding other issues within the scope of NACIQI's authority for consideration by NACIQI in the manner described below.

Oral comments may not exceed three minutes. Oral comments about an agency's recognition when a compliance report has been required by the senior Department official or the Secretary must relate to the criteria for recognition cited in the senior Department official's letter that requested the report, or in the Secretary's appeal decision, if any. Oral comments about an agency seeking expansion of scope must be directed to the agency's ability to serve as a recognized accrediting agency with respect to the kinds of institutions or programs requested to be added. Oral comments about the renewal of an agency's recognition must relate to its compliance with the Criteria for the Recognition of Accrediting Agencies, which are available at *http://www.ed.gov/admins/finaid/accred/index.html.* Written statements and oral comments concerning NACIQI's work outside of a specific accrediting agency under review must be limited to the scope of NACIQI's authority as outlined under section 114 of the HEA.

To request to make a third-party oral comment of three minutes or less during the February 23–24, 2022 meeting, please follow either Method One or Method Two below. To submit a written statement concerning the work of NACIQI outside a specific accrediting agency under review, please follow Method One.

Method One: Submit a request by email to the *ThirdPartyComments@ed.gov* mailbox. Please do not send material directly to NACIQI members. Written statements concerning the work of NACIQI outside a specific accrediting agency under review and requests to make oral comment must be received by February 11, 2022 and include in the subject line ''Oral Comment Request: (Agency name),'' ''Oral Comment Request: (Subject)'' or ''Written Statement: (Subject).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number, of the person(s) submitting a written statement or requesting to speak. All individuals submitting an advance request in accordance with this notice will be afforded an opportunity to speak.

Method Two (Only available to those seeking to make oral comments): Register on February 23, 2022, from 8:45 a.m.–9:45 a.m. Eastern Standard Time, to make an oral comment during NACIQI's deliberations by sending an email to the *ThirdPartyComments@ed.gov* mailbox. The requestor must provide the subject on which he or she wishes to comment, in addition to his/her name, title, organization/affiliation, mailing address, email address, and telephone number. A total of up to fifteen minutes for each agenda item will be allotted for oral commenters who register on February 23, 2022 by 9:45 a.m. Eastern Standard Time. Individuals will be selected on a first-come, first-served basis. If selected, each commenter may not exceed three minutes.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI website within 90 days after the meeting. In addition, pursuant to the FACA, the public may request to inspect records of the meeting at 400 Maryland Avenue SW, Washington, DC, by emailing *aslrecordsmanager@ed.gov* or by calling (202) 453–7415 to schedule an appointment. Senior Department official's (as defined in 34 CFR 602.3) decisions pursuant to 34 CFR 602.36 associated with all NACIQI Meetings can be found at the following website: *https://surveys.ope.ed.gov/erecognition/PublicDocuments.*

Reasonable Accommodations: The meeting weblink is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. We will attempt to meet a request received after that date, but we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is

available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Authority: 20 U.S.C. 1011c)

Annmarie Weisman,

Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 2022–01332 Filed 1–24–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0008]

Agency Information Collection Activities; Comment Request; National Resource Centers' Survey on Diverse Perspectives

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 28, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0008. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sara Starke, 202–453–7681.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Resource Centers' Survey on Diverse Perspectives.

OMB Control Number: 1840–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 100.

Total Estimated Number of Annual Burden Hours: 50.

Abstract: The National Resource Centers (NRC) program is authorized under Title VI, part A, section 602 of the Higher Education Act of 1965, as amended (HEA). The program provides grants to institutions of higher education (IHEs) or consortia of IHEs to establish, strengthen, and operate comprehensive and undergraduate centers that will be national resources for the teaching of modern foreign languages; instruction in fields needed to provide full understanding of world regions where modern foreign languages are used; research and training in international studies and international and foreign language aspects of professional and other fields of study; and instruction and research on issues in world affairs. NRC grants also support outreach activities to the K–16 education sectors and the business, media, and general public.

Dated: January 19, 2022.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–01328 Filed 1–24–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0163]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Grantee Reporting Form—Rehabilitation Services Administration (RSA) Annual Payback Report

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before February 24, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Karen Holliday, 202–245–7318.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also

helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Grantee Reporting Form—Rehabilitation Services Administration (RSA) Annual Payback Report.

OMB Control Number: 1820–0617.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals and Households; Private Sector.

Total Estimated Number of Annual Responses: 11,790.

Total Estimated Number of Annual Burden Hours: 4,858.

Abstract: Public Law 114–95, section 302(b) of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA), the Rehabilitation Services Administration (RSA) provides Long-Term Training grants to academic institutions to support scholarship assistance to students. Students who receive scholarships under this program are required to work within the public rehabilitation program, such as with a state vocational rehabilitation agency, or an agency or organization that has a service arrangement with a state vocational rehabilitation agency. The student is expected to work two years in such settings for every year of full-time scholarship support. The program regulations at 34 CFR 386.33–386.35 and 386.40–386.43 detail the payback provisions and the RSA scholars' requirements to comply with them.

Section 302 (b)(2)(C) of the Act requires tracking of scholars' employment status and location of former scholars supported under the grants in order to ensure that students are meeting the payback requirement. Scholars must provide requested information necessary to meet the exit certification requirements.

In addition to meeting the requirement that all scholars be tracked, the information collected will provide performance data relevant to the rehabilitation fields and degrees pursued by RSA scholars, as well as the funds owed and the rehabilitation work completed by them. These data are used to assess program effectiveness and efficiency, and to meet the reporting requirements of Public Law 103–62 section 4 of the Government Performance and Results Act (GPRA).

RSA is requesting an extension of the currently approved collection for grantees (Institutions of Higher Education), scholars, and employers to submit data electronically through the online RSA Payback Information Management System (PIMS). There is no substantial change in the proposed data collected, nor estimated burden required to report data using the PIMS system.

Dated: January 20, 2022.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–01385 Filed 1–24–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—National Technical Assistance Center for Inclusive Practices and Policies

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for a National Technical Assistance Center for Inclusive Practices and Policies, Assistance Listing Number 84.326Y. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: January 25, 2022.

Deadline for Transmittal of Applications: March 28, 2022.

Deadline for Intergovernmental Review: May 25, 2022.

Pre-Application Webinar Information: No later than January 31, 2022, the Office of Special Education Programs (OSEP) will post pre-recorded informational webinars designed to provide technical assistance (TA) to interested applicants. The webinars may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Susan Weigert, U.S. Department of Education, 400 Maryland Avenue SW, Room 5177, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6522. Email: *Susan.Weigert@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and improve results for children with disabilities by providing TA, supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

Priority: This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1463 and 1481(d)).

Absolute Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

National Technical Assistance Center for Inclusive Practices and Policies.

Background:

All children with disabilities benefit when educators have high expectations of them and take steps to ensure that they participate and make progress in the general education curriculum to the maximum extent possible (*e.g.,* Agran et al., 2020; Allor et al., 2014; Dessemontet et al., 2012; Gee et al., 2020; McDonnell & Hunt, 2014; Ryndak et al., 2013). Furthermore, IDEA requires that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (IDEA section 612(a)(5)(A)). This requirement to educate children in the least restrictive environment (LRE) is a cornerstone of IDEA and applies to all children with disabilities, including students with significant cognitive disabilities, who often need high levels of support.[1]

Despite the progress State educational agencies (SEAs) and local educational agencies (LEAs) have made in including students with disabilities in the LRE, many students with significant cognitive disabilities continue to be educated in separate settings (*e.g.,* classrooms, schools, and out-of-district placements) where exposure to the general education classroom, nondisabled peers, and the core curriculum is limited. The wide variation in educational placements across the country suggests, at a minimum, that placement of students with significant cognitive disabilities may not always be determined based on their individual educational needs. Further, despite advances in identifying effective and inclusive policies[2] and practices[3] for serving children with disabilities, implementation of the LRE requirements for children with significant cognitive disabilities, including those who are also English learners, remains a challenge for SEAs and LEAs. This TA Center will help address these challenges.

Priority:

The purpose of this priority is to fund a cooperative agreement to establish and operate a National Technical Assistance Center for Inclusive Practices and Policies (TA Center). The TA Center will assist SEAs and LEAs to successfully implement and sustain evidence-based[4] inclusive practices and policies based on individualized determinations, for students with significant cognitive disabilities, including those who are also English learners, in elementary, middle, and high school (K–12) programs. The TA Center will select, in collaboration with OSEP, SEAs with a demonstrated commitment to developing and implementing inclusive practices and policies in schools. The TA Center must achieve, at a minimum, the following expected outcomes:

(a) Increase the capacity of SEA, LEA, and school personnel to support and implement inclusive practices and policies in grade-level academic and extracurricular settings for students with significant cognitive disabilities.

(b) Increase the quantity of time that students with significant cognitive disabilities are served in more inclusive environments, where appropriate, based on their individual needs;

(c) Increase educational engagement for students with significant cognitive disabilities across multiple settings and activities (*e.g.,* classroom, academic instruction, extracurricular activities) throughout the school day;

(d) Improve the quality of instruction, including the use of interventions and accommodations supported by evidence, for students with significant cognitive disabilities in more inclusive environments based on their individual needs and aligned to the general education curriculum; and

(e) Develop and disseminate an implementation package of products and resources that will assist SEAs, LEAs, and schools to implement inclusive practices and policies and increase the amount of time that students with significant cognitive disabilities are served in the LRE, based on their individual needs.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Improve SEAs' and LEAs' implementation and sustainability of evidence-based inclusive practices and policies that are designed to improve access to more inclusive environments and increase the amount of educational engagement for students with significant cognitive disabilities. To meet this requirement, the applicant must—

(i) Present applicable State, regional, or local data demonstrating SEAs' and LEAs' needs for high-quality implementation of evidence-based inclusive practices and policies, as well as students' access to more inclusive environments, particularly for students with significant cognitive disabilities;

(ii) Present information about the current levels of inclusion of students with significant cognitive disabilities in systems of tiered support, including the availability of universal, general; targeted, specific; and intensive, sustained interventions designed to support retention of such students in inclusive classrooms;

(iii) Demonstrate knowledge of current educational issues and policy initiatives relating to inclusive practices and policies for students with significant cognitive disabilities, including those who are also English learners;

(iv) Present information about increasing implementation of inclusive vocational technology instruction to support transition and career-readiness for middle and high school students with significant cognitive disabilities, including preparation for competitive integrated or supported employment;

(v) Present information about increasing teachers' capacity to implement instruction aligned with appropriate standards, and formative and interim assessments for students with significant cognitive disabilities in inclusive classrooms; and

[1] Cognitive disabilities include intellectual disabilities, autism, multiple disabilities, deaf-blindness, and traumatic brain injury.

[2] For the purposes of this priority, *inclusive policies* refer to State and local education policies that support the implementation of inclusive practices.

[3] For the purposes of this priority, *inclusive practices* refer to a range of individualized supplementary aids and services that facilitate the participation of students with disabilities in general education classrooms. Examples include adapted curricula aligned to grade-level or alternate academic achievement standards, specific instructional strategies, classroom instructional configurations, and personnel in general education settings.

[4] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

(vi) Present information about increasing parents' capacity to become effective partners in implementing inclusive practices for students with significant cognitive disabilities; and

(2) Address the likely magnitude or importance of improving the quantity of time students with significant cognitive disabilities spend in general educational environments, where appropriate, based on their individual needs, and increasing the amount of their educational engagement.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model [5] by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework; https://osepideasthatwork.org/evaluation?tab=eval-logic;* and *https://ies.ed.gov/ncee/edlabs/regions/central/pdf/REL_2021112.pdf.*

(4) Be based on current research and make use of evidence-based practices (EBPs). To meet this requirement, the applicant must describe—

(i) How the proposed project proposes to identify, develop, and expand the knowledge base about instruction and assessment of students with significant cognitive disabilities;

(ii) The current research about adult learning principles and implementation science that will inform the proposed TA;

(iii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services; and

(iv) How the proposed project will collaborate with the OSEP-funded National Assessment Center to incorporate information on including students with significant cognitive disabilities in State and district-wide assessment systems;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop and expand the knowledge base about instruction and assessment of students with significant cognitive disabilities;

(ii) Its proposed approach to universal, general TA,[6] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[7] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level;

(iv) Its proposed approach to intensive, sustained TA,[8] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of TA recipients to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the local district and program levels;

(C) Its proposed plan for assisting SEAs, LEAs, and school personnel to build or enhance training systems that include professional development based on adult learning principles and coaching; and

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, districts, schools, families) to ensure that there is communication between each level and that there are systems in place to support implementation of evidence-based inclusive practices and policies;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the TA Center's products and services.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an

[5] Logic model (34 CFR 77.1) (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

[6] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited, or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[7] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[8] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as a negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

evaluation plan for the project developed in consultation with and implemented by a ''third-party'' evaluator.[9] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions must be related to the project's proposed logic model required in paragraph (b)(2)(ii) of this notice;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR) and at the end of Year 2 for the review process described under the heading, *Fourth and Fifth Years of the Project;* and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one- and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two- and one-half-day project directors' conference in Washington, DC, or virtually, during each year of the project period;

(iii) Up to two annual two-day trips, or virtually, to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, or virtually, during the last half of the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of five (5) percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(6) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts with experience and knowledge in providing TA to address the needs of students with the most significant cognitive disabilities and inclusive practices. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

References

Agran, M., Jackson, L., Kurth, J., Ryndak, D., Burnette, K., Jameson, M., Zagona, A.,

[9] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

Fitzpatrick, H., & Wehmeyer, M. (2020). Why aren't students with severe disabilities being placed in general education classrooms: Examining the relations among classroom placement, learner outcomes, and other factors. *Research and Practice for Persons with Severe Disabilities, 45*(1), 4–13. *https://doi.org/10.1177/1540796919878134.*

Allor, J. H., Mathes, P. G., Roberts, J. K., Cheatham, J. P., & Al Otaiba, S. (2014). Is scientifically based reading instruction effective for students with below-average IQs? *Exceptional Children, 80,* 287–306. *https://doi.org/10.1177/0014402914522208.*

Dessemontet, R. S., Bless, G., & Morin, D. (2012). Effects of inclusion on the academic achievement and adaptive behavior of children with intellectual disabilities. *Journal of Intellectual Disability Research, 56*(6), 579–587. *http://dx.doi.org/10.1111/j.1365-2788.2011.01497.x.*

Gee, K., Gonzalez, M., & Cooper, C. (2020). Outcomes of inclusive versus separate placements: A matched pairs comparison study. *Research and Practice for Persons with Severe Disabilities, 45,* 223–240. *https://doi.org/10.1177/1540796920943469.*

McDonnell, J., & Hunt, P. (2014). Inclusive education and meaningful school outcomes. In Agran, M., Brown, F., Hughes, C., Quirk, C., Ryndak, D. (Eds.), Equity and full participation for individuals with severe disabilities: A vision for the future (pp. 155–176). Paul H. Brookes Publishing Co., Inc.

Ryndak, D. L., Jackson, L., & White, J. M. (2013). Involvement and progress in the general curriculum for students with extensive support needs: K–12 inclusive-education research and implications for the future. *Inclusion, 1*(1), 28–49. *https://doi.org/10.1352/2326-6988-1.1.028.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (No procurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $49,345,000 for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program for FY 2022, of which we intend to use an estimated $2,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2023 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding $2,000,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to the Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200, subpart D.

4. *Other General Requirements:*

a. Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

b. Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979February* 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your

application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.

• Use a font that is 12 point or larger.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project design and services (35 points).*

(1) The Secretary considers the quality of the design of the proposed project and the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) *Quality of the project evaluation (20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The qualifications, including relevant training, experience, and independence, of the evaluator.

(v) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(vi) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(vii) The extent to which the budget is adequate to support the proposed project.

(viii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on

reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities program. These measures are:

- *Program Performance Measure 1:* The percentage of technical assistance and dissemination products and services deemed to be of high quality by an independent review panel of experts qualified to review the substantive content of the products and services.
- *Program Performance Measure 2:* The percentage of special education technical assistance and dissemination products and services deemed by an independent review panel of qualified experts to be of high relevance to educational and early intervention policy or practice.
- *Program Performance Measure 3:* The percentage of all special education technical assistance and dissemination products and services deemed by an independent review panel of qualified experts to be useful in improving educational or early intervention policy or practice.
- *Program Performance Measure 4:* The cost efficiency of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.
- *Long-term Program Performance Measure:* The percentage of States receiving special education technical assistance and dissemination services regarding scientifically or evidence-based practices for infants, toddlers, children, and youth with disabilities that successfully promote the implementation of those practices in school districts and service agencies.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the TA Center meet needs identified by stakeholders and may require the TA Center to report on such alignment in its annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Deputy Assistant Secretary. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2022–01353 Filed 1–24–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–41–000.
Applicants: Snyder ESS Assets, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Snyder ESS Assets, LLC.
Filed Date: 1/18/22.
Accession Number: 20220118–5133.
Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: EG22–42–000.
Applicants: Westover ESS Assets, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/18/22.
Accession Number: 20220118–5135.
Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: EG22–43–000.
Applicants: Sweetwater ESS Assets, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sweetwater ESS Assets, LLC.
Filed Date: 1/18/22.
Accession Number: 20220118–5136.
Comment Date: 5 p.m. ET 2/8/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1739–002.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: Compliance filing: American Transmission Systems, Incorporated submits tariff filing per 35: ATSI submits Order No. 864 Compliance Filing in ER20–1739 to be effective 1/27/2020.
Filed Date: 1/18/22.
Accession Number: 20220118–5185.
Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER21–1635–004.
Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing re Black Start Revisions to Tariff, Schedule 6A to be effective 6/6/2021.

Filed Date: 1/14/22.

Accession Number: 20220114–5223.

Comment Date: 5 p.m. ET 2/4/22.

Docket Numbers: ER21–2423–003.

Applicants: Generation Bridge Connecticut Holdings, LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 7/15/2021.

Filed Date: 1/12/22.

Accession Number: 20220112–5118.

Comment Date: 5 p.m. ET 1/24/22.

Docket Numbers: ER21–2423–003; ER21–2424–003.

Applicants: Generation Bridge M&M Holdings, LLC, Generation Bridge Connecticut Holdings, LLC.

Description: Generation Bridge Connecticut Holdings, LLC et al submit a request for a shortened comment period to the January 12 Response to the December 22, 2021 deficiency letter of no more than ten days or by January 22, 2022.

Filed Date: 1/14/22.

Accession Number: 20220114–5284.

Comment Date: 5 p.m. ET 1/24/22.

Docket Numbers: ER21–2424–003.

Applicants: Generation Bridge M&M Holdings, LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 7/15/2021.

Filed Date: 1/12/22.

Accession Number: 20220112–5120.

Comment Date: 5 p.m. ET 1/24/22.

Docket Numbers: ER22–24–001.

Applicants: System Energy Resources, Inc.

Description: Tariff Amendment: SERI UPSA Pension Filing Deficiency Response to be effective 12/1/2021.

Filed Date: 1/14/22.

Accession Number: 20220114–5227.

Comment Date: 5 p.m. ET 2/4/22.

Docket Numbers: ER22–828–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3761R1 KEPCO NITSA NOA; 2463R2 KEPCO Cancellation; and 2451R5 KEPCO Cancellation to be effective 1/1/2022.

Filed Date: 1/14/22.

Accession Number: 20220114–5231.

Comment Date: 5 p.m. ET 2/4/22.

Docket Numbers: ER22–829–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX–LCRA TSC Crane Facilities Development Agreement to be effective 1/5/2022.

Filed Date: 1/18/22.

Accession Number: 20220118–5003.

Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER22–830–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6108; Queue No. AE1–183 to be effective 6/17/2021.

Filed Date: 1/18/22.

Accession Number: 20220118–5087.

Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER22–831–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2824R7 KMEA & Sunflower Meter Agent Agreement to be effective 1/1/2022.

Filed Date: 1/18/22.

Accession Number: 20220118–5090.

Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER22–833–000.

Applicants: Southern California Edison Company.

Description: Compliance filing: Order 864 ADIT Compliance Filing to be effective 1/27/2020.

Filed Date: 1/18/22.

Accession Number: 20220118–5148.

Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER22–834–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: OATT Revised LGIP Sections 36, 38, 39, 42, 43, 46, 48, Attachment N & O, Tariff to be effective 4/1/2022.

Filed Date: 1/18/22.

Accession Number: 20220118–5186.

Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER22–835–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, SA No. 6310; Queue No. AG1–086 to be effective 1/5/2022.

Filed Date: 1/18/22.

Accession Number: 20220118–5187.

Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER22–836–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: OATT Revised Attachment H–1 (Updates Form 1 Source References 2022) to be effective 3/20/2022.

Filed Date: 1/18/22.

Accession Number: 20220118–5202.

Comment Date: 5 p.m. ET 2/8/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01320 Filed 1–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2425–057]

PE Hydro Generation, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2425–057.

c. *Date filed:* January 3, 2022.

d. *Applicant:* PE Hydro Generation, LLC.

e. *Name of Project:* Luray and Newport Hydroelectric Project (P–2425–057).

f. *Location:* The two-development Luray and Newport Project is located on the South Fork of the Shenandoah River near the Towns of Luray (Luray Development) and Newport (Newport Development) in Page County, Virginia. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Jody Smet, Vice President, Regulatory Affairs, PE Hydro Generation, LLC, 7315 Wisconsin Ave., Suite 1100W, Bethesda, MD 20814; Phone at (240) 482–2700 or email at *jody.smet@eaglecreekre.com.*

i. *FERC Contact:* Jody Callihan at (202) 502–8278, or *jody.callihan@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with

jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* March 4, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Luray and Newport Project (P–2425–057).

m. The application is not ready for environmental analysis at this time.

n. The Luray Development consists of: (1) A 21.9-foot-high, 525-foot-long reinforced concrete dam impounding a small reservoir with a gross storage capacity of 880 acre-feet; (2) a powerhouse adjacent to the south end of the dam, with three generating units having a total installed capacity of 1,600 kilowatts (kW); (3) transmission facilities consisting of the 2.4-kilovolt (kV) project generator leads; a 3-phase, 2.4/34.5-kV transformer; and a 34.5-kV, 8,131-foot-long transmission line; and (4) other appurtenances.

The Newport Development consists of: (1) A 28.8-foot-high, 443-foot-long reinforced concrete dam impounding a small reservoir with a gross storage capacity of 1,090 acre-feet; (2) a powerhouse adjacent to the north end of the dam, with three generating units having a total installed capacity of 1,400 kW; (3) transmission facilities consisting of the 2.4-kV project generator leads; a 3-phase, 2.4/34.5-kV transformer; and a 34.5-kV, 8,131-foot-long transmission line; and (4) other appurtenances.

The project operates in a run-of-river mode with minimum flows of 47 cubic feet per second (cfs) and 40 cfs, at the Luray and Newport Developments, respectively. The project had an average annual generation of 10,928 megawatt-hours between 2011 and 2016.

o. Copies of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–2425). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary).	March 2022.
Request Additional Information (if necessary).	March 2022.
Issue Acceptance Letter	May 2022.
Issue Scoping Document 1 for comments.	June 2022.
Issue Scoping Document 2 (if necessary).	August 2022.
Issue Notice of Ready for Environmental Analysis.	August 2022.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: January 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01323 Filed 1–24–22; 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 Part 284 Natural Gas Pipeline Rate filings:

Filings Instituting Proceedings

Docket Number: PR22–16–000.

Applicants: Bay Gas Storage Company, LLC.

Description: § 284.123(g) Rate Filing: Bay Gas Storage Housekeeping Changes to SOC to be effective 12/31/2021.

Filed Date: 12/30/21.

Accession Number: 20211230–5207.

Comments Due: 5 p.m. ET 1/20/2022.

284.123(g) Protests Due: 5 p.m. ET 2/28/2022.

Docket Number: PR22–17–000.

Applicants: Louisville Gas and Electric Company.

Description: Submits tariff filing per 284.123(b),(e)/: Operating Statement Rate Change to be effective 12/6/2021.

Filed Date: 1/3/22.

Accession Number: 20220103–5203.

Comments/Protests Due: 5 p.m. ET 1/24/2022.

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.

Filings in Existing Proceedings

Docket Numbers: RP22–417–001.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Tariff Amendment: TGP PCG Pooling Amendment to be effective 3/1/22.

Filed Date: 1/4/22.

Accession Number: 20220104–5001.

Comment Date: 5 p.m. ET 1/18/22.

Any person desiring to protest in any 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: January 4, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01316 Filed 1–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2391–053]

PE Hydro Generation, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2391–053.

c. *Date filed:* January 3, 2022.

d. *Applicant:* PE Hydro Generation, LLC.

e. *Name of Project:* Warren Hydroelectric Project (P–2391–053).

f. *Location:* The Warren Project is located on the Shenandoah River near the Town of Front Royal in Warren County, Virginia. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Jody Smet, Vice President, Regulatory Affairs, PE Hydro Generation, LLC, 7315 Wisconsin Ave., Suite 1100W, Bethesda, MD 20814; Phone at (240) 482–2700 or email at *jody.smet@eaglecreekre.com.*

i. *FERC Contact:* Jody Callihan at (202) 502–8278, or *jody.callihan@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: March 4, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Warren Project (P–2391–053).

m. The application is not ready for environmental analysis at this time.

n. *The Warren Project consists of the following existing facilities:* (1) A 15-foot-high, 483-foot-long reinforced concrete dam impounding a small reservoir with a gross storage capacity of 900 acre-feet; (2) an 82-foot-long, 30-foot-wide powerhouse adjacent to the north end of the dam containing three generating units with a total installed capacity of 750 kilowatts; (3) transmission facilities consisting of the 2.4-kilovolt (kV) project generator leads; a 3-phase, 2.4/34.5-kV transformer; and a 34.5-kV, 14,784-foot-long transmission line; and (4) other appurtenances.

The project operates in a run-of-river mode with a minimum flow of 56 cubic feet per second. The project had an average annual generation of 3,456 megawatt-hours between 2013 and 2017.

o. Copies of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–2391). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary).	March 2022.
Request Additional Information (if necessary).	March 2022.
Issue Acceptance Letter	May 2022.
Issue Scoping Document 1 for comments.	June 2022.
Issue Scoping Document 2 (if necessary).	August 2022.
Issue Notice of Ready for Environmental Analysis.	August 2022.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: January 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01318 Filed 1–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2509–051]

PE Hydro Generation, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2509–051.

c. *Date filed:* January 3, 2022.

d. *Applicant:* PE Hydro Generation, LLC.

e. *Name of Project:* Shenandoah Hydroelectric Project (P–2509–051).

f. *Location:* The Shenandoah Project is located on the South Fork of the Shenandoah River near the Town of Shenandoah in Page and Rockingham, Counties, Virginia. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Jody Smet, Vice President, Regulatory Affairs, PE Hydro Generation, LLC, 7315 Wisconsin Ave., Suite 1100W, Bethesda, MD 20814; Phone at (240) 482–2700 or email at *jody.smet@eaglecreekre.com.*

i. *FERC Contact:* Jody Callihan at (202) 502–8278, or *jody.callihan@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: March 4, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Shenandoah Project (P–2509–051).

m. The application is not ready for environmental analysis at this time.

n. *The Shenandoah Project consists of the following existing facilities:* (1) A 15-foot-high, 495-foot-long reinforced concrete dam impounding a small reservoir with a gross storage capacity of 190 acre-feet; (2) a powerhouse adjacent to the north end of the dam, with four generating units having a total installed capacity of 862 kilowatts; (3) transmission facilities consisting of the 2.4-kilovolt (kV) project generator leads; a 3-phase, 2.4/34.5-kV transformer; and a 34.5-kV, 8,025-foot-long transmission line; and (4) other appurtenances.

The project operates in a run-of-river mode with a minimum flow of 44 cubic feet per second. The project had an average annual generation of 2,037 megawatt-hours between 2011 and 2016.

o. Copies of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–2509). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary).	March 2022.
Request Additional Information (if necessary).	March 2022.
Issue Acceptance Letter	May 2022.
Issue Scoping Document 1 for comments.	June 2022.
Issue Scoping Document 2 (if necessary).	August 2022.
Issue Notice of Ready for Environmental Analysis.	August 2022.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: January 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01321 Filed 1–24–22; 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: EC22–36–000.

Applicants: Borderlands Wind, LLC.

Description: Application for Authorization Under section 203 of the Federal Power Act of Borderlands Wind, LLC.

Filed Date: 1/19/22.

Accession Number: 20220119–5162.

Comment Date: 5 p.m. ET 2/9/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1740–004.

Applicants: Rippey Wind Energy LLC.

Description: Notice of Non-Material Change in Status of Rippey Wind Energy LLC.

Filed Date: 1/18/22.

Accession Number: 20220118–5293.

Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER20–1720–003.

Applicants: Southern California Edison Company.

Description: Compliance filing: Order 864 ADIT Compliance Filing to be effective 1/27/2020.

Filed Date: 1/18/22.

Accession Number: 20220118–5148.

Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER22–837–000.

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: Boeing 449 Amendments to be effective 12/18/2021.

Filed Date: 1/18/22.

Accession Number: 20220118–5212.

Comment Date: 5 p.m. ET 2/8/22.

Docket Numbers: ER22–838–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6322; Queue No. AG2–394 to be effective 12/21/2021.

Filed Date: 1/19/22.

Accession Number: 20220119–5017.

Comment Date: 5 p.m. ET 2/9/22.

Docket Numbers: ER22–839–000.

Applicants: Copper Mountain Solar 5, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Baseline to be effective 1/20/2022.

Filed Date: 1/19/22.

Accession Number: 20220119–5019.

Comment Date: 5 p.m. ET 2/9/22.

Docket Numbers: ER22–840–000.

Applicants: Battle Mountain SP, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Baseline to be effective 1/20/2022.

Filed Date: 1/19/22.

Accession Number: 20220119–5022.

Comment Date: 5 p.m. ET 2/9/22.

Docket Numbers: ER22–841–000.

Applicants: Spring Valley Wind LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Baseline to be effective 1/20/2022.

Filed Date: 1/19/22.

Accession Number: 20220119–5031.

Comment Date: 5 p.m. ET 2/9/22.

Docket Numbers: ER22–842–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 5666; Queue No. AF1–033 (amend) to be effective 5/28/2020.

Filed Date: 1/19/22.

Accession Number: 20220119–5102.

Comment Date: 5 p.m. ET 2/9/22.

Docket Numbers: ER22–843–000.

Applicants: Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Services, LLC, Entergy Texas, Inc., Entergy Arkansas, LLC.

Description: § 205(d) Rate Filing: Entergy Louisiana, LLC submits tariff filing per 35.13(a)(2)(iii: EAL–MSS–4 Replacement Tariff to be effective 8/1/2021.

Filed Date: 1/19/22.

Accession Number: 20220119–5137.

Comment Date: 5 p.m. ET 2/9/22.

Docket Numbers: ER22–844–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2022–01–19 Maximum Import Capability Enhancements to be effective 3/21/2022.

Filed Date: 1/19/22.

Accession Number: 20220119–5149.

Comment Date: 5 p.m. ET 2/9/22.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH22–6–000.

Applicants: LS Power Development, LLC.

Description: LS Power Development, LLC submits FERC 65–B Notice of Change in Fact to Waiver Notification.

Filed Date: 1/18/22.

Accession Number: 20220118–5291.

Comment Date: 5 p.m. ET 2/8/22.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01379 Filed 1–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–485–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates Filing on 1–14–22 to be effective 1/15/2022.

Filed Date: 1/14/22.

Accession Number: 20220114–5032.

Comment Date: 5 p.m. ET 1/26/22.

Docket Numbers: RP22–486–000.

Applicants: Dominion Energy Overthrust Pipeline, LLC.

Description: § 4(d) Rate Filing: Revised Title Page Version No. 6 to be effective 2/14/2022.

Filed Date: 1/14/22.

Accession Number: 20220114–5054.

Comment Date: 5 p.m. ET 1/26/22.

Docket Numbers: RP22–487–000.

Applicants: Dominion Energy Questar Pipeline, LLC.

Description: § 4(d) Rate Filing: Revised Title Page Version No. 8 to be effective 2/14/2022.

Filed Date: 1/14/22.

Accession Number: 20220114–5056.

Comment Date: 5 p.m. ET 1/26/22.

Docket Numbers: RP22–488–000.

Applicants: White River Hub, LLC.

Description: § 4(d) Rate Filing: Revised Title Pages Version No. 5 to be effective 2/14/2022.

Filed Date: 1/14/22.

Accession Number: 20220114–5057.

Comment Date: 5 p.m. ET 1/26/22.

Docket Numbers: RP22–489–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: TPC 2022–01–14 GT&C Section 18 Revision to be effective 2/14/2022.

Filed Date: 1/14/22.

Accession Number: 20220114–5111.

Comment Date: 5 p.m. ET 1/26/22.

Docket Numbers: RP22–490–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Clean-Up Filing—January 2022 to be effective 2/14/2022.

Filed Date: 1/14/22.

Accession Number: 20220114–5191.

Comment Date: 5 p.m. ET 1/26/22.

Docket Numbers: RP22–491–000.

Applicants: Great Lakes Gas Transmission Limited Partnership.

Description: Compliance filing: Semi-Annual Transporter's Use Report January 2022 to be effective N/A.

Filed Date: 1/18/22.

Accession Number: 20220118–5197.

Comment Date: 5 p.m. ET 1/31/22.

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.

Filings in Existing Proceedings

Docket Numbers: RP16–1022–001.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: Colorado Interstate Gas Company, L.L.C. submits tariff filing per 154.203: Petition to Amend Docket No. RP16–1022 Stipulation and Agreement to be effective N/A.

Filed Date: 01/18/2022.

Accession Number: 20220118–5191.

Comment Date: 5 p.m. ET 1/25/22.

Docket Numbers: RP17–972–002.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Compliance filing: Petition to Amend Docket No. RP17–972 Stipulation and Agreement to be effective N/A.

Filed Date: 1/18/22.

Accession Number: 20220118–5183.

Comment Date: 5 p.m. ET 1/25/22.

Docket Numbers: RP19–276–002.

Applicants: Young Gas Storage Company, Ltd.

Description: Compliance filing: Petition to Amend Docket No. RP19–276 Stipulation and Agreement to be effective N/A.

Filed Date: 1/18/22.

Accession Number: 20220118–5192.

Comment Date: 5 p.m. ET 1/25/22.

Docket Numbers: RP21–734–002.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Compliance filing: Clean Up Filing—Metadata Correction to be effective 7/1/2021.

Filed Date: 1/14/22.

Accession Number: 20220114–5037.

Comment Date: 5 p.m. ET 1/26/22.

Any person desiring to protest in any 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 by clicking on the links or 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: January 19, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01378 Filed 1–24–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–821–000]

Spotlight Power 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 Spotlight Power 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 February 7, 2022.

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: January 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01319 Filed 1–24–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9479–01–OA]

Request for Nominations of Experts for the Review of Technical Support Document for the Social Cost of Greenhouse Gases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for nominations.

SUMMARY: The Environmental Protection Agency (EPA) National Center for Environmental Economics (NCEE), on behalf of the co-chairs of the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG), including the Chair of the Council of Economic Advisors (CEA), the Director of the Office of Management and Budget (OMB), and the Director of the Office of Science and Technology Policy (OSTP), requests public nominations of scientific experts for the upcoming peer review of ''*Technical Support Document: Social Cost of Greenhouse Gas Estimates.*'' This document will undergo independent external scientific peer review managed by a contractor to EPA. Interested stakeholders will be provided 21 days to submit nominations for expert reviewers for consideration by the EPA contractor.

DATES: The 21-day public comment period to provide nominations begins January 25, 2022 and ends February 15, 2022. Comments must be received on or before February 15, 2022.

ADDRESSES: Submit your nominations by emailing them to *SC-GHG@epa.gov* (subject line: SC–GHG Peer Review Nomination) no later than February 15, 2022. To receive full consideration, nominations should include all of the information requested below. Please be advised that public comments are subject to release under the Freedom of Information Act, including communications on these nominations.

FOR FURTHER INFORMATION CONTACT:

For general information, please contact: Nathalie Simon, NCEE; email: *simon.nathalie@epa.gov.*

Questions about the peer review, including the nomination process, can be directed to *SC-GHG@epa.gov* (subject line: SC–GHG Peer Review Question) until a contractor is selected or by phone: (202)566–2347. Once selected,

contractor information will be made available at *https://www.epa.gov/environmental-economics/scghg-tsd-peer-review.*

SUPPLEMENTARY INFORMATION:

I. Background

A robust and scientifically founded assessment of the positive and negative impacts that an action can be expected to have on society provides important insights in the policy-making process. Estimates of the social cost of carbon ($SC–CO_2$), social cost of methane ($SC–CH_4$), and social cost of nitrous oxide ($SC–N_2O$), collectively called the Social Cost of Greenhouse Gases (SC–GHG), are used to estimate the value to society of marginal reductions in greenhouse gas emissions, or conversely, the social costs of increasing such emissions, in the policymaking process. Federal agencies began regularly incorporating $SC–CO_2$ estimates in benefit-cost analyses conducted under Executive Order (E.O.) 12866 in 2008, following a court ruling in which an agency was ordered to consider the value of reducing carbon dioxide emissions in a rulemaking process. In 2009, an original interagency working group (IWG) was established to ensure that agencies had access to the best available science and to promote consistency in the estimated values. The IWG published $SC–CO_2$ estimates in 2010. These estimates were updated in 2013. In August 2016, the IWG published a technical support document (TSD) providing $SC–CH_4$ and $SC–N_2O$ estimates using methodologies that are consistent with the methodology underlying the $SC–CO_2$ estimates.

On February 26, 2021, under Executive Order (E.O.) 13990, a re-constituted IWG issued an updated TSD that recommended interim estimates of the $SC–CO_2$, $SC–CH_4$, and $SC–N_2O$ while a more comprehensive updated set of SC–GHG estimates were developed. The interim SC–GHG estimates are reported in 2020 dollars, but otherwise use identical methods and inputs to those presented in the 2016 version of the TSD and its Addendum, including the same three peer-reviewed integrated assessment models. On May 7, 2021, OMB, on behalf of the co-chairs of the IWG, published a notice requesting public comment on the interim TSD as well as on how best to incorporate the latest peer-reviewed science and economics literature in developing an updated set of SC–GHG estimates.

A TSD with updated SC–GHG estimates is being developed and will be released for public comment and will undergo peer review. The forthcoming TSD will present a comprehensive update of the SC–GHG estimates taking into consideration the recommendations of the National Academies of Sciences, Engineering, and Medicine (as reported in *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide* (2017)), other pertinent scientific literature, and the public comments received on the February 2021 interim TSD.

EPA is releasing this announcement to notify the public of upcoming peer review activities related to the forthcoming TSD containing updated SC–GHG estimates. This TSD will undergo independent, external scientific peer review managed by a contractor to EPA. EPA will provide the selected contractor with all reviewer nominations received in response to this notice. The contractor will both screen the nominees submitted as a result of this notice to ensure they have the types of disciplinary expertise listed in the notice and use traditional techniques (*e.g.,* a literature search) to identify additional qualified candidates in the disciplines described below. The contractor will formulate a pool of at least (15) candidate external reviewers to provide independent external reviews of the TSD. The contractor will request comment on the pool of candidate external reviewers (*i.e.,* List of Candidates) in a future public posting (as described below). After consideration of public comments on the List of Candidates, the contractor will select from this pool the final multi-disciplinary panel of five (5) to seven (7) peer reviewers in a manner consistent with EPA's *Peer Review Handbook 4th Edition, 2015* (EPA/100/B–15/001). EPA will provide updates on the status of the peer review via the SC–GHG TSD peer review website (*https://www.epa.gov/environmental-economics/scghg-tsd-peer-review*). EPA encourages all interested stakeholders to register for receipt of future announcements by emailing *SC-GHG@epa.gov* (subject line: SC–GHG Peer Review Future Announcements). Until a contractor selection is made, specific questions or comments on the peer review process should also be directed to *SC-GHG@epa.gov* (subject line: SC–GHG Peer Review Question).

II. Information About This Peer Review

EPA is seeking nominations of nationally and internationally recognized experts with demonstrated expertise and research on in one or more of the following areas:

- Environmental economics with a focus on modeling the impacts of climate change, uncertainty, and/or discounting,
- climate science, with a focus on the estimation of future climatic variables resulting from different emission scenarios, and on the calculation of impacts resulting from elevated greenhouse gas concentrations,
- integrated assessment modeling, and
- benefit-cost analysis.

A balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately provide rigorous scientific peer review. In forming the list of candidate external reviewers (*i.e.,* the List of Candidates), the contractor will consider the nominations submitted in response to this notice and use traditional techniques (*e.g.,* a literature search) to identify additional qualified candidates in the disciplines listed above. Public comments on the List of Candidates will be solicited in a future announcement. The contractor will rely on public comments received on the List of Candidates, the information provided by the candidates themselves, and background information. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of any potential organizational or personal conflicts of interest; and (d) skills working in committees, subcommittees and advisory panels.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above. Self-nominations are permitted. Submit your nominations by email to *SC-GHG@epa.gov* (subject line: SC–GHG Peer Review Nomination). To receive full consideration, nominations should include all of the requested information: Contact information about the person making the nomination; contact information about the nominee; the nominee's disciplinary and specific areas of expertise; the nominee's resume or curriculum vitae; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures should contact *SC-GHG@epa.gov* (subject line: SC–GHG Peer

Review Question), as noted above. EPA will acknowledge receipt of nominations and will refer all nominations to the contractor for evaluation. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, along with additional experts identified by the contractor, will be posted on the SC–GHG TSD peer review website and will be available for public comment. The process for public comment on the pool of nominees, as well as the date and location of public meetings related to this peer review, will be announced on the SC–GHG TSD peer review website, and through the SC–GHG TSD peer review contact list.

Dated: January 19, 2022.

Albert McGartland,

Director, National Center for Environmental Economics.

[FR Doc. 2022–01387 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2022–0097; FRL–9455–01–OW]

National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater Fact Sheet Series

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public input.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is seeking public input on updating the National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater Fact Sheet Series (hereinafter referred to as ''the fact sheets''). EPA's industrial stormwater program has 29 fact sheets currently posted online for each sector covered under the 2021 Multi-Sector General Permit (MSGP) for stormwater discharges from industrial activity. Each fact sheet describes the types of facilities included in the sector, typical stormwater pollutants associated with the sector, and types of stormwater control measures (SCMs) that may be used to minimize the discharge of the pollutants. EPA is seeking public input on the fact sheets, particularly focused on updating: Common activities, pollutant sources, and associated pollutants at facilities in each sector; and SCMs or best management practices (BMPs), including source control and good housekeeping/pollution prevention measures for potential pollutant sources at facilities in each sector. In updating the fact sheets, EPA will consider input received in response to this notice as well as any relevant comments related to the content of the fact sheets that the Agency received during the public comment period for the proposed 2021 MSGP. The fact sheets can be found in the docket and at *https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-fact-sheets-and-guidance.*

DATES: Comments on the fact sheets must be received on or before March 28, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2022–0097, by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Katelyn Amraen, EPA Headquarters, Office of Water, Office of Wastewater Management (MC 4203M), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–2740; email address: *amraen.katelyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2022–0097, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

EPA's industrial stormwater program has 29 fact sheets currently posted online for each sector covered under the MSGP and shown below:

Sector A—Timber Products.
Sector B—Paper and Allied Products Manufacturing.
Sector C—Chemical and Allied Products Manufacturing.
Sector D—Asphalt Paving and Roofing Materials Manufactures and Lubricant Manufacturers.
Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing.
Sector F—Primary Metals.
Sector G—Metal Mining (Ore Mining and Dressing).
Sector H—Coal Mines and Coal Mining-Related Facilities.
Sector I—Oil and Gas Extraction.
Sector J—Mineral Mining and Dressing.
Sector K—Hazardous Waste Treatment Storage or Disposal.
Sector L—Landfills and Land Application Sites.
Sector M—Automobile Salvage Yards.
Sector N—Scrap Recycling Facilities.
Sector O—Steam Electric Generating Facilities.
Sector P—Land Transportation.
Sector Q—Water Transportation.
Sector R—Ship and Boat Building or Repairing Yards.
Sector S—Air Transportation Facilities.
Sector T—Treatment Works.
Sector U—Food and Kindred Products.
Sector V—Textile Mills, Apparel, and other Fabric Products Manufacturing.
Sector W—Furniture and Fixtures.
Sector X—Printing and Publishing.
Sector Y—Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.
Sector Z—Leather Tanning and Finishing.

Sector AA—Fabricated Metal Products.

Sector AB—Transportation Equipment, Industrial or Commercial Machinery.

Sector AC—Electronic, Electrical, Photographic and Optical Goods.

Each fact sheet describes the types of facilities included in the sector, typical stormwater pollutants associated with the sector, and types of SCMs that may be used to minimize the discharge of the pollutants. The fact sheets are used by permittees, industrial stormwater stakeholders, and state/territory NPDES permitting authorities on a voluntary basis as a reference tool and informational resource. EPA currently does not mandate the use of the fact sheets for permit compliance or otherwise under the NPDES industrial stormwater program.

As part of a 2016 MSGP settlement agreement, EPA agreed to and proposed the following changes in the proposed 2021 MSGP:

- Review and revise ''the MSGP's sector-specific fact sheets to incorporate emerging SCMs that reflect BAT [Best Available Technology Economically Achievable] and BCT [Best Conventional Pollutant Control Technology], as revealed by current industry practice and as may be reflected in the NRC Study, as EPA deems appropriate.'' [1]
- Propose, as part of Additional Implementation Measures (AIM) Tier 2, ''the operator must implement all feasible control measures in the relevant sector-specific fact sheet . . .''

EPA fulfilled these terms from the 2016 MSGP settlement agreement in the proposed 2021 MSGP by incorporating a portion of the revised fact sheets into the proposed permit as sector specific SCM checklists in permit ''Appendix Q.'' Ultimately, based on public comments, EPA did not finalize that the SCM checklists in Appendix Q or the associated requirement to implement the controls under AIM Tier 2, nor did EPA post the revised versions of the proposed checklists online. Instead, EPA retained the sector-specific fact sheets as guidance documents and revised each of them to include practices that operators could use to minimize per- and polyfluoroalkyl substances (PFAS) in stormwater discharges. For a detailed summary of the comments EPA received on Appendix Q and the Agency's response to comments, please see Comment Response Essay 4 Proposals Not Finalized for ''Appendix Q—Stormwater Control Measures'' (page 60) in ''Response to Public Comments EPA NPDES 2021 Multi-Sector General Permit (MSGP)'' which can be found in the docket for the 2021 MSGP under Document ID number EPA–HQ–OW–2019–0372–0349 or at the following website: *https://www.regulations.gov/document/EPA-HQ-OW-2019-0372-0349.*

Even though EPA did not finalize Appendix Q, the Agency recognized the need to evaluate and potentially revise the fact sheets in the near future. In the final 2021 MSGP **Federal Register** Notice, EPA stated in two instances that:

- ''EPA plans to work with external stakeholders to thoroughly revise the sector-specific fact sheets'' (86 FR 10269, 10274, February 19, 2021), and
- ''EPA will continue to work with stakeholders to further update these sector-specific fact sheets with additional emerging stormwater control measures that could be used by industrial operators'' (86 FR 10269, 10275, February 19, 2021 (specific to PFAS)).

IV. Approach To Obtain Stakeholder Input on Fact Sheets

Based on EPA's commitment in the final 2021 MSGP **Federal Register** Notice, EPA is now seeking feedback on appropriate updates and revisions to the 29 industrial stormwater fact sheets related to the two main tables in each fact sheet:

(1) Common activities, pollutant sources, and associated pollutants at facilities in each sector, and

(2) SCMs or BMPs including source control and good housekeeping/pollution prevention measures for potential pollutant sources at facilities in each sector.

The fact sheets can be found in the docket and at *https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-fact-sheets-and-guidance.*

To assist EPA in reviewing and evaluating public input, please consider the following when preparing your comments for the Agency:

- Where possible, organize comments by referencing a specific fact sheet (*e.g.,* ''Sector A'') and the paragraph, table, or part of the fact sheet.
- Explain as clearly as possible why you agree or disagree with the current fact sheet language.
- Suggest alternatives and substitute language for any requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns.

In addition to considering the comments received in response to this **Federal Register** Notice, EPA will also consider the relevant comments related to the fact sheets that the Agency received during the public comment period for the proposed 2021 MSGP. Through this request for comment, EPA intends to afford commenters the opportunity to consider the full content of the fact sheets, rather than the subset of information that was proposed as ''Appendix Q'' of the proposed 2021 MSGP, since ''Appendix Q'' only contained the SCM checklist portion of the existing fact sheets. EPA encourages comment from all stakeholders, including smaller industry groups, individual permittees, and community and environmental groups.

EPA will assess the public input received and determine what changes to the fact sheets are appropriate and warranted, and what, if any, further research is needed to support the changes. EPA will then make changes to the fact sheets and post the updated fact sheets on the industrial stormwater website.

Dated: January 18, 2022.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2022–01382 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

[1] The ''NRC Study'' refers to a study funded by EPA and conducted by the National Academies of Sciences, Engineering, and Medicine's National Research Council (NRC) that was completed in February of 2019. The NRC study can be found at the following website: *https://www.nap.edu/catalog/25355/improving-the-epa-multi-sector-general-permit-for-industrial-stormwater-discharges.*

ENVIRONMENTAL PROTECTION AGENCY

[EPA HQ–OW–2008–0150; FRL 9350–01–OW]

Proposed Information Collection Request; Comment Request; Establishing Vessel Sewage No-Discharge Zones (NDZs) Under Clean Water Act (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) plans to submit an information collection request (ICR), ''Establishing No-Discharge Zones (NDZs) Under Clean Water Act Section 312 (Renewal)'' (EPA ICR No. 1791.09, OMB Control No. 2040–0187) to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA solicits public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2022. An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before March 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2008–0150, online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

For comments submitted at *www.regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). The EPA encourages the public to submit comments via *www.regulations.gov,* as there will be a delay in processing mail, and hand deliveries will be accepted on a limited basis. 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: Kelsey Watts-FitzGerald, Oceans, Wetlands and Communities Division, Office of Wetlands, Oceans and Watersheds, (4504T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202–566–0232; email address: *watts-fitzgerald.kelsey@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents that explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. The official public docket is located at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The regular hours of the EPA Docket Center Public Reading Room are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays; however, due to the COVID–19 pandemic, there may be limited or no opportunity to enter the docket center. At the time of this printing, out of an abundance of caution for members of the public and the EPA staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. During this time, Docket Center staff will continue to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on the EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available on the EPA's website at *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.'' It is important to note that the EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

The EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in the EPA's electronic public docket but will be available only in printed, paper form in the official public docket. The EPA has not included any copyrighted material in the docket for this FR Notice of Information Request. If commenters submit copyrighted material in a public comment, it will be placed in the official public docket and made available for public viewing when the EPA Docket Center is open. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA solicits comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and, (iv) 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 EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: (A) *Sewage No-Discharge Zones:* CWA section 312(f) and the implementing regulations in 40 CFR part 140 identify the information that must be included in a state's application to the EPA to establish a no-discharge zone (NDZ) for vessel sewage for some or all of the state's waters.

In designated NDZs, the discharge of both treated and untreated sewage from vessels is prohibited. A state is not required to designate an NDZ and therefore need only develop applications for waters where such a discharge prohibition has been deemed necessary and beneficial by the state. This ICR addresses the burden to state respondents to develop applications

containing the necessary information, as well as the burden associated with the EPA's review of state applications. The information collection activities discussed in this ICR do not require the submission of any confidential information.

(B) *Uniform National Discharge Standards (UNDS) NDZs and Review of Discharge Determination or Standard:* CWA section 312(n)(7) and the implementing regulations in 40 CFR part 1700 identify the information that a state must submit to the EPA in the state's application to establish an NDZ for one or more discharges incidental to the normal operation of a vessel of the Armed Forces. A state may seek an NDZ designation for any incidental discharge subject to UNDS for which the EPA and Department of Defense (DoD) have promulgated national standards of performance and corresponding implementing regulations, respectively. In addition, CWA section 312(n)(5) provides that that the Governor of any state may petition the EPA and DoD to review any discharge determination or standard promulgated under CWA section 312(n) for vessels of the Armed Forces if there is significant new information that could reasonably result in a change to the discharge determination or standard. This ICR addresses the burden to a state respondent to develop applications for NDZs and requests for a review of a determination or standard and the burden to the EPA to review the applications. The information collection activities discussed in this ICR do not require the submission of any confidential information.

Form numbers: None.

Respondents/affected entities: States.

Respondent's obligation to respond: The responses to this collection of information are required to obtain the benefit of a sewage NDZ (CWA section 312(f)). The responses to this collection of information are required to obtain the benefit of an UNDS NDZ or a review of an UNDS discharge determination or standard (CWA section 312(n)).

Estimated number of respondents: 17 (total).

Frequency of response: One time.

Total estimated burden: 914 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $50,869 (per year), includes $848 annualized capital or operation & maintenance costs.

Changes in Estimates: The EPA expects a decrease in hours in the total estimated respondent burden compared with the ICR currently approved by OMB. EPA expects a decrease in the overall costs as well, despite increases to state and federal labor costs. These decreases are attributable to fewer anticipated respondents compared with previous estimates. This adjustment is made to account for overestimates in the existing ICR and the EPA's estimate of applications for NDZs and review of standards that may be submitted during the three-year ICR cycle.

Dated: January 19, 2022.

John Goodin,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 2022–01430 Filed 1–24–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0095; –0117]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0095; and –0117).

DATES: Comments must be submitted on or before March 28, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/index.html.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Procedures for Monitoring Bank Protection Act Compliance.

OMB Number: 3064–0095.

Form Number: None.

Affected Public: Insured state nonmember banks.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDENS (OMB NO. 3064–0095)

IC description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
Implementation Burden:						
Bank Protection Act Compliance Program—*Institutions with an Asset Size Less than $500 million.*	Recordkeeping (Mandatory).	Annually	35	1	50	1,750
Bank Protection Act Compliance Program—*Medium-Sized Institutions ($500 million–$10 billion).*	Recordkeeping (Mandatory).	Annually	57	1	300	17,100
Bank Protection Act Compliance Program—*Large Institutions (Over $10 billion).*	Recordkeeping (Mandatory).	Annually	12	1	500	6,000

SUMMARY OF ESTIMATED ANNUAL BURDENS (OMB NO. 3064–0095)—Continued

IC description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
Ongoing Burden:						
Bank Protection Act Compliance Program—Routine Revisions.	Recordkeeping (Mandatory).	Annually	2,880	1	5	14,400
Bank Protection Act Compliance Program—Significant Revisions.	Recordkeeping (Mandatory).	Annually	320	1	35	11,200
Total Annual Burden Hours	.....	.....	.....	.....	.....	50,450

Source: FDIC.

General Description of Collection: The collection requires insured state nonmember banks to comply with the Bank Protection Act and to review bank security programs The Bank Protection Act of 1968 (12 U.S.C. 1881–1884) requires each Federal supervisory agency to promulgate rules establishing minimum standards for security devices and procedures to discourage financial crime and to assist in the identification of persons who commit such crimes. To avoid the necessity of constantly updating a technology-based regulation, the FDIC takes a flexible approach to implementing this statute. It requires each insured nonmember bank to designate a security officer who will administer a written security program. The security program must: (1) Establish procedures for opening and closing for business and for safekeeping valuables; (2) establish procedures that will assist in identifying persons committing crimes against the bank; (3) provide for initial and periodic training of employees in their responsibilities under the security program; and (4) provide for selecting, testing, operating and maintaining security devices as prescribed in the regulation. In addition, the FDIC requires the security officer to report at least annually to the bank's board of directors on the effectiveness of the security program.

There is no change in the method or substance of the collection. The 48,683 increase in burden hours is the result of the agency re-evaluating the time it takes for recordkeeping and reporting associated with the rule, and including new implementation burdens for new entities and entities reviewing their policies in light of mergers and other organizational changes.

2. *Title:* Mutual-to-Stock Conversion of State Savings Banks.

OMB Number: 3064–0117.

Form Numbers: None.

Affected Public: Insured state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0117)

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Hours per response	Annual burden (hours)
Application or Notice to engage in certain activities	Reporting	On occasion ...	5	250	1,250
Total Annual Burden (Hours)	.....	.....	.....	.....	1,250

Source: FDIC.

General Description of Collection: State savings associations must file a notice of intent to convert to stock form, and provide the FDIC with copies of documents filed with state and federal banking and/or securities regulators in connection with any proposed mutual-to-stock conversion. There is no change in the method or substance of the collection.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on January 19, 2022.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–01313 Filed 1–24–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Notice Claiming Status as an Exempt Transfer Agent (FR 4013; OMB No. 7100–0137).

DATES: Comments must be submitted on or before March 28, 2022.

ADDRESSES: You may submit comments, identified by FR 4013, by any of the following methods:

• *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

• *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Notice Claiming Status as an Exempt Transfer Agent.

Agency form number: FR 4013.

OMB control number: 7100–0137.

Frequency: On occasion.

Respondents: Board-regulated transfer agents.

Estimated number of respondents: Exemption notice: 1; exemption disqualification notice: 1.

Estimated average hours per response: Exemption notice: 2; exemption disqualification notice: 2.

Estimated annual burden hours: Exemption notice: 2; exemption disqualification notice: 2.

General description of report: Transfer agents, which are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers,[1] are generally subject to certain Securities and Exchange Commission (SEC) regulations. However, a transfer agent that is regulated by and registered with the Board (a Board-regulated transfer agent) may request an exemption from those regulations if it transfers and processes a low volume of securities (a low-volume transfer agent). A transfer agent is Board-regulated if it is a state member bank or a subsidiary thereof, a bank holding company, or a savings and loan holding company. A Board-regulated transfer agent may request an exemption from the SEC regulations by filing with the Board a notice certifying that it qualifies as a low-volume transfer agent. In addition, a Board-regulated low-volume transfer agent that no longer meets the requirements of being a low-volume transfer agent must notify the Board of that fact.

Legal authorization and confidentiality: The FR 4013 is authorized pursuant to sections 2, 17(a)(3), 17A(c), and 23(a) of the Exchange Act,[2] which, among other things, authorize the Board to promulgate regulations and establish recordkeeping and reporting requirements with respect to Board-regulated transfer agents.[3]

The exemption notice is mandatory for Board-registered transfer agents seeking the exemption. The obligation to respond for the exemption notice, therefore, is required to obtain a benefit. The exemption disqualification notice is mandatory for a Board-regulated transfer agent that no longer qualifies for the exemption.

The information collected in the FR 4013 regarding a Board-regulated transfer agent's volume of transactions is public information through the filing and publication of the transfer agent's Form TA–2 with the SEC. Therefore, individual respondent data collected by the FR 4013 are not confidential.

[1] See 15 U.S.C. 78c(a)(25) (defining ''transfer agent'').

[2] 15 U.S.C. 78b, 78q(a)(3), 78q–1(c), and 78w(a).

[3] Additionally, the Board also has the authority to require reports from bank holding companies (12 U.S.C. 1844(c)), savings and loan holding companies (12 U.S.C. 1467a(b) and (g)), and state member banks (12 U.S.C. 248(a) and 324).

Board of Governors of the Federal Reserve System, January 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–01418 Filed 1–24–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision the Disclosure Requirements of Subpart H of Regulation H (Consumer Protection in Sales of Insurance) (FR H–7; OMB No. 7100–0298).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Disclosure Requirements of Subpart H of Regulation H (Consumer Protection in Sales of Insurance).

Agency form number: FR H–7.

OMB control number: 7100–0298.

Effective Date: January 25, 2022.

Frequency: On occasion.

Respondents: State member banks or any other person at an office of a bank or on behalf of a bank (collectively, Covered Persons).

Estimated number of respondents: Insurance and extension of credit, 341; advertisements, 341.

Estimated average hours per response: Insurance and extension of credit, 1.5 minutes; advertisements, 25 minutes.

Estimated annual burden hours: Insurance and extension of credit, 5,371; advertisements, 142.

General description of report: The insurance consumer protection rules in Regulation H require depository institutions to prepare and provide certain disclosures to consumers. The disclosure requirements are codified at 12 CFR 208.81 *et seq.* and require Covered Persons to make certain disclosures: Before the completion of the initial purchase of an insurance product or annuity by a consumer; at the time a consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold; and in advertisements and promotional materials for insurance products or annuities.

Legal authorization and confidentiality: The Disclosure Requirements of Subpart H of Regulation H are authorized by section 305 of the Gramm-Leach-Bliley Act of 1999, which requires that the Board issue regulations, including disclosure requirements, applicable to retail sales practices, solicitations, advertising, or offers of insurance by depository institutions.[1] The disclosures required under Subpart H of Regulation H are mandatory.

Because the FR H–7 disclosures are provided by state member banks to customers, confidentiality issues should generally not arise. In the event the records are obtained by the Board as part of the examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the Freedom of Information Act, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[2]

Current actions: On October 5, 2021, the Board published a notice in the **Federal Register** (86 FR 54978) requesting public comment for 60 days on the extension, with revision, of the Disclosure Requirements of Subpart H of Regulation H (Consumer Protection in Sales of Insurance). The Board revised the FR H–7 collection to account for one existing disclosure requirement in Regulation H that was not previously cleared by the Board under the PRA. The revision of the FR H–7 information collection accounts for this disclosure provision. This revision does not amend Regulation H or add any new information collection requirements. The comment period for this notice expired on December 6, 2021. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, January 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–01416 Filed 1–24–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1831x. The Board also has the authority to require reports from state member banks. 12 U.S.C. 248(a) and 324.

[2] 5 U.S.C. 552(b)(8).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping Provisions Associated with the Interagency Statement on Complex Structured Finance Activities (FR 4022; OMB No. 7100–0311).

DATES: Comments must be submitted on or before March 28, 2022.

ADDRESSES: You may submit comments, identified by *FR 4022,* by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Recordkeeping Provisions Associated with the Interagency Statement on Complex Structured Finance Activities.

Agency form number: FR 4022.

OMB control number: 7100–0311.

Frequency: Annually.

Respondents: State member banks, bank holding companies (other than foreign banking organizations), savings and loan holding companies (SLHCs), and U.S. branches and agencies of foreign banks.

Estimated number of respondents: 18.

Estimated average hours per response: 10.

Estimated annual burden hours: 180.

General description of report: The Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities (the Statement) [1] states that certain financial institutions should establish and maintain written policies and procedures for identifying, evaluating, assessing, documenting, and controlling risks associated with complex structured finance transactions (CSFTs) and should retain certain documents related to elevated risk CSFTs, which are a subcategory of CSFTs. The FR 4022 covers these information collections for financial institutions that are subject to the Statement and that are supervised by the Board.

Legal authorization and confidentiality: The Board's recordkeeping guidance associated with the Statement relates to information that the Board is authorized to collect under the Federal Reserve Act (with respect to state member banks),[2] under the Bank Holding Company Act (with respect to bank holding companies),[3] under the Home Owners' Loan Act (with respect to SLHCs),[4] and under the International Banking Act (with respect to U.S. branches and agencies of foreign banks).[5] The FR 4022 recordkeeping provisions are voluntary.

Any policies, procedures, or other records voluntarily created based on the Statement would be maintained at the financial institution that created them. The Freedom of Information Act (FOIA) would be implicated only if the Board obtained such records as part of the examination or supervision of a financial institution, in which case the records may be protected from disclosure under FOIA exemption 8, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[6] Information provided on the FR 4022 may also be exempt from disclosure pursuant to FOIA exemption 4 if it is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent.[7]

Board of Governors of the Federal Reserve System, January 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–01417 Filed 1–24–22; 8:45 am]

BILLING CODE 6210–01–P

[1] See *https://www.federalregister.gov/documents/2007/01/11/07-55/interagency-statement-on-sound-practices-concerning-elevated-risk-complex-structured-finance.*

[2] 12 U.S.C. 248(a).

[3] 12 U.S.C. 1844(c).

[4] 12 U.S.C. 1467a(b) and 1467a(g).

[5] 12 U.S.C. 3105(c) and 3108(a).

[6] 5 U.S.C. 552(b)(8).

[7] 5 U.S.C. 552(b)(4).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0801]

Agency Information Collection Activities; Proposed Collection; Comment Request; Exports Notification and Recordkeeping Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection 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 notifications and records required for human drug, biological product, device, animal drug, food, cosmetic, and tobacco product exports.

DATES: Submit either electronic or written comments on the collection of information by March 28, 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 March 28, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 28, 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–2014–N–0801 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Exports Notification and Recordkeeping Requirements.'' 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.

Exports Notification and Recordkeeping Requirements—21 CFR 1.101

OMB Control Number 0910–0482—Extension

Sections 801 and 802 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381 and 21 U.S.C. 382) charge the Secretary of Health and Human Services, through FDA, with the responsibility of helping to ensure that exports of unapproved new drugs, biologics, devices, animal drugs, food, cosmetics, and tobacco products that are not to be sold in the United States meet the requirements of the country to which the product is to be exported. The respondents to this information collection are exporters who have notified FDA of their intent to export unapproved products that may not be sold or offered for sale in domestic commerce in the United States as allowed under section 801(e) of the FD&C Act. In general, the notification identifies the product being exported (*e.g.,* name, description, and in some cases, country of destination) and specifies where the notifications were sent. These notifications are sent only for an initial export. Subsequent exports of the same product to the same destination or to certain countries identified in section 802(b) of the FD&C Act would not result in a notification to FDA.

Respondents to the information collection are exporters of products that may not be sold in the United States and are regulated by FDA's Center for Drug Evaluation and Research (CDER); Center for Biologics Evaluation and Research (CBER); Center for Devices and Radiological Health (CDRH); Center for Veterinary Medicine (CVM); Center for Food Safety and Applied Nutrition (CFSAN); and Center for Tobacco Products. Respondents to this collection of information maintain records demonstrating their compliance with the requirements in 21 CFR 1.101.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1.101(d) (CBER)	5	92	460	15	6,900
1.101(d) (CDER)	5	180	900	15	13,500
1.101(d) (CDRH)	160	1	160	15	2,400
Total					22,800

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1.101(b), (c), and (e) (CBER, CDER, CDRH, CFSAN, and CVM)	320	3	960	22	21,120
1.101(b) Office of International Programs only	1	189	189	22	4,158
1.101(b) (currently regulated Tobacco Products)	322	3	966	22	21,252
Total					46,530

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of Agency data, we are retaining the currently approved burden estimates associated with the individual reporting and recordkeeping elements.

Dated: January 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01372 Filed 1–24–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3662]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance on Reagents for Detection of Specific Novel Influenza A Viruses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection 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 the guidance on reagents for detection of specific novel influenza A viruses.

DATES: Submit either electronic or written comments on the collection of information by March 28, 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 March 28, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 28, 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–2015–N–3662 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance on Reagents for Detection of Specific Novel Influenza A Virus.'' 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: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *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.

Guidance on Reagents for Detection of Specific Novel Influenza A Viruses—21 CFR Part 866

OMB Control Number 0910–0584—Extension

In accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360c), FDA evaluated an application for an in vitro diagnostic device for detection of influenza subtype H5 (Asian lineage), commonly known as avian flu. FDA concluded that this device is properly classified into class II in accordance with section 513(a)(1)(B) of the FD&C Act, because it is a device for which the general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls to provide such assurance. The statute permits FDA to establish as special controls many different things, including postmarket surveillance, development and dissemination of guidance recommendations, and ''other appropriate actions as the Secretary [of HHS] deems necessary'' (section

513(a)(1)(B) of the FD&C Act). This information collection is a measure that FDA determined to be necessary to provide reasonable assurance of safety and effectiveness of reagents for detection of specific novel influenza A viruses.

FDA issued an order classifying the H5 (Asian lineage) diagnostic device into class II on March 22, 2006 (71 FR 14377), establishing the special controls necessary to provide reasonable assurance of the safety and effectiveness of that device and similar future devices. The new classification was codified in 21 CFR 866.3332, a regulation that describes the new classification for reagents for detection of specific novel influenza A viruses and sets forth the special controls that help to provide a reasonable assurance of the safety and effectiveness of devices classified under that regulation. The regulation refers to the document entitled ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses,'' which provides recommendations for measures to help provide a reasonable assurance of safety and effectiveness for these reagents. The guidance recommends that sponsors obtain and analyze postmarket data to ensure the continued reliability of their device in detecting the specific novel influenza A virus that it is intended to detect, particularly given the propensity for influenza viruses to mutate and the potential for changes in disease prevalence over time. The guidance document is available on our website at: *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm078583.htm.*

As updated sequences for novel influenza A viruses become available from the World Health Organization, National Institutes of Health, and other public health entities, sponsors of reagents for detection of specific novel influenza A viruses will collect this information, compare them with the primer/probe sequences in their devices, and incorporate the result of these analyses into their quality management system, as required by 21 CFR 820.100(a)(1). These analyses will be evaluated against the device design validation and risk analysis required by 21 CFR 820.30(g) to determine if any design changes may be necessary.

FDA estimates that 12 respondents will be affected annually. The respondent will collect this information twice per year; each response is estimated to take 15 hours. This results in a total data collection burden of 360 hours.

The guidance also refers to previously approved information collections found in FDA regulations. The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Recordkeeping regarding reagents for detection of specific novel influenza A viruses	12	2	24	15	360

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall increase of 330 hours and a corresponding increase of 22 records. We attribute this adjustment to an increase in the number of devices of this type being manufactured over the last few years.

Dated: January 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01369 Filed 1–24–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4042]

Agency Information Collection Activities; Proposed Collection; Comment Request; Establishing and Maintaining Lists of United States Establishments With Interest in Exporting Center for Food Safety and Applied Nutrition-Regulated Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection 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 the information collection associated with export lists for products regulated by the Center for Food Safety and Applied Nutrition (CFSAN).

DATES: Submit either electronic or written comments on the collection of information by March 28, 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 March 28, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 28, 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–2018–N–4042 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Establishing and Maintaining Lists of U.S. Establishments with Interest in Exporting Center for Food Safety and Applied Nutrition-Regulated Products.'' 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.

Establishing and Maintaining Lists of U.S. Establishments With Interest in Exporting CFSAN-Regulated Products

OMB Control Number 0910–0509—Extension

The United States exports a large volume and variety of foods in international trade. Foreign governments often require official certification from the responsible authority of the country of origin about imported foods and establishments involved in their production, storage, or distribution. Some foreign governments establish additional requirements with which exporters are required to comply and ask for additional assurances from the responsible authority. Importing countries may require, and FDA may provide, official certification or assurances for food products in different forms, including certificates that accompany specific products or lists of establishments and products that comply with certain requirements.

To facilitate exports of food subject to importing country listing requirements, FDA has historically provided official certification in the form of country- and product-specific export lists that include establishments and their products when: (1) The establishment has expressed interest in exporting their products to these countries; (2) the establishment and the products are subject to FDA's jurisdiction; and (3) the establishment can demonstrate that it is in good regulatory standing for the products it intends to export, and the products are expected to comply with applicable FDA requirements. As we advised in the guidance document ''Establishing and Maintaining a List of U.S. Milk and Milk Product, Seafood,

Infant Formula, and Formula for Young Children Manufacturers/Processors with Interest in Exporting to China,'' FDA considers ''good regulatory standing'' as meaning that an establishment is in substantial compliance with applicable FDA requirements and is not the subject of a pending enforcement action (*e.g.,* an injunction or seizure) or pending administrative action (*e.g.,* a warning letter).

FDA has generally published guidance documents for these country- and product-specific lists under the authority of section 701(h) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371(h)), which authorizes the Secretary of Health and Human Services (the Secretary) to develop guidance documents with public participation presenting the views of the Secretary on matters under the jurisdiction of FDA. The guidance documents generally explain what information establishments should submit to FDA to be considered for inclusion on the lists and what criteria FDA intends to use to determine eligibility for placement on the lists. The guidance documents also explain how FDA intends to update the lists and communicate any new information to the governments that requested the lists. Finally, the guidance documents note that the information is provided voluntarily by establishments with the understanding that it may be posted on FDA's external website and that it will be communicated to, and possibly further disseminated by, the government that requested the list; thus, FDA considers the information on the lists to be information that is not protected from disclosure under 5 U.S.C. 552(b)(4). The guidance documents include ''Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors with Interest in Exporting to Chile'' and ''Establishing and Maintaining a List of U.S. Milk and Milk Product, Seafood, Infant Formula, and Formula for Young Children Manufacturers/Processors with Interest in Exporting to China'' available at *https://www.fda.gov/food/guidance-regulation-food-and-dietary-supplements/guidance-documents-regulatory-information-topic-food-and-dietary-supplements.* Additional information about FDA's Food Export Lists program is available at *https://www.fda.gov/food/exporting-food-products-united-states/food-export-lists.* FDA has also published guidance on export certification that contains useful information that applies to export lists: ''FDA Export Certification'' available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/fda-export-certification.*

Foreign governments are increasingly relying on certification as a strategy for ensuring the safety of imported food products, and many countries have announced new requirements for lists of establishments and products certified to comply with certain food safety requirements. FDA is committed to facilitating compliance with new listing requirements for U.S. establishments that export FDA-regulated food products. We also understand that complying with multiple country- and product-specific listing requirements can be burdensome to U.S. establishments. For this reason, we plan to create a new list of establishments and products certified for export that would be offered to importing countries in lieu of country-specific lists.

Application for inclusion on all export lists will continue to be voluntary. However, some foreign governments may require inclusion on export lists as a precondition for market access or to satisfy other importing country registration or approval requirements. FDA uses the Export Listing Module (ELM), an electronic system (Form FDA 3972), to receive and process applications for inclusion on export lists for CFSAN-regulated products. The ELM allows applicants to provide information about the products intended for export, the establishment that produces those products, evidence of the establishment's compliance with applicable requirements for the products intended for export, and any additional data or information (such as third-party certifications) that foreign governments may require. We request that this information be updated every 2 years. Additional information and screenshots of the ELM are available at *https://www.fda.gov/food/exporting-food-products-united-states/food-export-lists.* If an establishment is unable to submit an application via the ELM, it may contact CFSAN and request assistance.

We use the information submitted by establishments to determine eligibility for certification and inclusion on the export lists, which may be published on our website or the websites of foreign governments. The purpose of the lists is to help CFSAN-regulated industries meet the import requirements of foreign governments. This collection of information is intended to cover all of CFSAN's existing export lists, as well as any additional export lists established by the center.

FDA notes section 801 of the FD&C Act (21 U.S.C. 381) also provides that FDA may charge a fee of up to $175 if the Agency issues export certification within 20 days of receipt of a complete request for such certification.

Description of Respondents: Respondents to this collection of information include U.S. establishments subject to FDA/CFSAN jurisdiction that wish to be included on export lists.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
New request	167	5	835	1	835
New request + third party certification	85	2	170	22	3,740
Biennial update	132	4	528	0.5 (30 minutes)	264
Biennial update + third party certification	58	2	116	22	2,552
Occasional updates	60	2	120	0.5 (30 minutes)	60
Total			1,769		7,451

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, the estimated burden for this information collection has decreased. The number of respondents has declined dramatically since we transitioned to using the ELM, which also allows us to collect more precise data. These changes resulted in overall

decreases of 3,421 responses and 14,837 burden hours.

Dated: January 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01376 Filed 1–24–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0031]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on March 3, 2022, from 9 a.m. to 3:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions, including information regarding special accommodations due to a disability, visitor parking, and transportation, may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* The online web conference meeting will be available at the following link on the day of the meeting: *https://youtu.be/7fIEUdmn3AU.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–0031. The docket will close on March 2, 2022. Submit either electronic or written comments on this public meeting by March 2, 2022. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 23, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 23, 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.

Comments received on or before February 23, 2022, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–2022–N–0031 for ''Vaccines and Related Biological Products; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA 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 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 the 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: Prabhakara Atreya or Lisa Wheeler, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD

20993–0002, 240–506–4946, respectively at *CBERVRBPAC@fda.hhs.gov*; or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before joining the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will meet in open session to discuss and make recommendations on the selection of strains to be included in the influenza virus vaccines for the 2022–2023 influenza season.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before February 23, 2022, will be provided to the committee. Comments received after February 23, 2022, and by March 2, 2022, will be taken into consideration by FDA. Oral presentations from the public will be scheduled on March 3, 2022, between approximately 1:30 p.m. and 2:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 17, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 18, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Prabhakara Atreya (see **FOR FURTHER INFORMATION CONTACT**), at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01368 Filed 1–24–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4130]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by February 24, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0658. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water—21 CFR 129.35(a)(3)(i), 129.80(g), and 129.80(h)

OMB Control Number 0910–0658—Extension

The bottled water regulations in parts 129 and 165 (21 CFR parts 129 and 165) require that if any coliform organisms are detected in weekly total coliform testing of finished bottled water, followup testing must be conducted to determine whether any of the coliform organisms are *Escherichia coli* (*E. coli*). The adulteration provision of the bottled water standard (21 CFR 165.110(d)) provides that a finished product that tests positive for *E. coli* will be deemed adulterated under section 402(a)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(3)). In addition, the current good manufacturing practice (CGMP) regulations for bottled water in part 129 require that source water from other than a public water system be tested at least weekly for total coliform. If any coliform organisms are detected in the source water, bottled water manufacturers are required to determine whether any of the coliform organisms are *E. coli.* Source water found to

contain *E. coli* is not considered water of a safe, sanitary quality and would be unsuitable for bottled water production. Before a bottler may use source water from a source that has tested positive for *E. coli,* a bottler must take appropriate measures to rectify or otherwise eliminate the cause of the contamination. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site are tested and found to be *E. coli* negative.

Description of Respondents: The respondents to this information collection are domestic and foreign bottled water manufacturers that sell bottled water in the United States.

In the **Federal Register** of November 1, 2021 (86 FR 60258), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§§ 129.35(a)(3)(i) and 129.80(h); bottlers subject to both source water and finished product testing.	319	6	1,914	0.08 (5 minutes) ...	153
§ 129.80(g) and (h); bottlers only subject to finished product testing.	95	3	285	0.08 (5 minutes) ...	23
§§ 129.35(a)(3)(i) and 129.80(h); bottlers conducting secondary testing of source water.	3	5	15	0.08 (5 minutes) ...	1
§§ 129.35(a)(3)(i) and 129.80(h); bottlers rectifying contamination.	3	3	9	0.25 (15 minutes)	2
Total	.....	.....	.....	.....	179

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

The current CGMP regulations already reflect the time and associated recordkeeping costs for those bottlers that are required to conduct microbiological testing of their source water, as well as total coliform testing of their finished bottled water products. We therefore conclude that any additional burden and costs in recordkeeping based on followup testing that is required if any coliform organisms detected in the source water test positive for *E. coli* are negligible.

Dated: January 19, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01370 Filed 1–24–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Management Grant Program

Announcement Type: New.

Funding Announcement Number: HHS–2022–IHS–TMD–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.228.

Key Dates

Application Deadline Date: April 25, 2022.

Earliest Anticipated Start Date: June 9, 2022.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for grants for the Tribal Management Grant (TMG) Program. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law (Pub. L.) 93–638, as amended, 25 U.S.C. 5322(b)(2) and 25 U.S.C. 5322(e). This program is described in the Assistance Listings located at *https://sam.gov/content/home* (formerly known as the CFDA) under 93.228.

Background

The TMG Program is a competitive grant program that is capacity building and developmental in nature and has been available for federally recognized Indian Tribes and Tribal Organizations (T/TO) since shortly after enactment of the ISDEAA in 1975. The TMG Program was established to assist T/TOs to prepare for assuming all or part of existing IHS programs, functions, services, and activities (PFSAs) and further develop and improve Tribal health management capabilities. The TMG Program provides competitive grants to T/TOs to establish goals and performance measures for current health programs, assess current management capacity to determine if new components are appropriate, analyze programs to determine if a T/TO's management is practicable, and develop infrastructure systems to manage or organize PFSAs.

Purpose

The purpose of this program is to enhance and develop health management infrastructure and assist T/TOs in assuming all or part of existing IHS PFSAs through a Title I ISDEAA contract and assist established Title I ISDEAA contractors and Title V ISDEAA compactors to further develop and improve management capability. In addition, Tribal Management Grants are available to T/TOs under the authority of 25 U.S.C. 5322(e) for the following:

1. Obtaining technical assistance from providers designated by the T/TO (including T/TOs that operate mature contracts) for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates.

2. planning, designing, monitoring, and evaluating Federal programs serving T/TOs, including Federal administrative functions.

II. Award Information

Funding Instrument—Grant

Estimated Funds Available

The total funding identified for fiscal year (FY) 2022 is approximately $2,465,000. Individual award amounts

for the first budget year are anticipated to be between $50,000 and $150,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately 14–16 awards will be issued under this program announcement.

Period of Performance

The Tribal Management Grant (TMG Project) period of performance varies based on the project type selected. Period of performance is from 1 to 3 years. Please refer to ''Eligible TMG Project Types, Maximum Funding Levels, and Periods of Performance'' for additional details.

Eligible TMG Project Types, Maximum Funding Levels, and Project Periods

The TMG Program consists of four project types:

1. Feasibility study.
2. Planning.
3. Evaluation study.
4. Health management structure.

Applicants may submit applications for one project type only. An application must state the project type selected. Any application that addresses more than one project type will be considered ineligible and will not be reviewed. The maximum funding levels noted must include both direct and indirect costs. Application budgets may not exceed the maximum funding level or period of performance identified for a project type. Any application with a budget or period of performance that exceeds the maximum funding level or period of performance will be considered ineligible and will not be reviewed. Please refer to Section IV.5, ''Funding Restrictions,'' for further information regarding ineligible project activities.

1. *FEASIBILITY STUDY (Maximum funding/project period:* $70,000/12 months) A feasibility study must include a study of a specific IHS program or segment of a program to determine if Tribal management of the program is possible. The study shall present the planned approach, training, and resources required to assume Tribal management of the program. The study must include the following four components:

- Health needs and health care service assessments that identify existing health care services and delivery systems, program divisibility issues, health status indicators, unmet needs, volume projections, and demand analysis.
- Management analysis of existing management structures, proposed management structures, implementation plans and requirements, and personnel staffing requirements and recruitment barriers.
- Financial analysis of historical trends data, financial projections, new resource requirements for program management costs, and analysis of potential revenues from Federal/non-Federal sources.
- Decision statement/report that incorporates findings, conclusions, and recommendations. The study and recommendations report is to be presented to the Tribal governing body for determination regarding whether Tribal program assumption is desirable or warranted.

2. *PLANNING (Maximum funding/project period:* $50,000/12 months) Planning projects involve data collection to establish goals and performance measures for health programs operation or anticipated PFSAs under a Title I contract. Planning projects will specify the design of health programs and the management systems (including appropriate policies and procedures) to accomplish the health priorities of the T/TO. For example, planning projects could include the development of a Tribe-specific health plan or a strategic health plan, etc. Please note that updated Healthy People information and Healthy People 2020 objectives are available in electronic format at *https://www.healthypeople.gov/2020/topics-objectives.* The United States (U.S.) Public Health Service encourages applicants submitting strategic health plans to address specific objectives of Healthy People 2020.

3. *EVALUATION STUDY (Maximum funding/project period:* $50,000/12 months) An evaluation study must include a systematic collection, analysis, and interpretation of data for the purpose of determining the value of a program. The extent of the evaluation study could relate to the goals and objectives, policies and procedures, or programs regarding targeted groups. The evaluation study could also be used to determine the effectiveness and efficiency of a T/TO's program operations (*i.e.,* direct services, financial management, personnel, data collection and analysis, third-party billing, etc.), as well as to determine the appropriateness of new components of a T/TO's program operations that will assist efforts to improve Tribal health care delivery systems.

4. *HEALTH MANAGEMENT STRUCTURE (Average funding/project period:* $100,000/12 months; maximum funding/project period: $300,000/36 months) The first year funding level is limited to $150,000 for multi-year projects. The Health Management Structure component allows for implementation of systems to manage or organize PFSAs. Management structures include health department organizations, health boards, and financial management systems, including systems for accounting, personnel, third-party billing, medical records, management information systems, etc. This includes the design, improvement, and correction of management systems that address weaknesses identified through quality control measures, internal control reviews, and audit report findings under required financial audits and ISDEAA requirements.

For the minimum standards for the management systems used by a T/TO when carrying out Self-Determination contracts, please see 25 CFR part 900, Contracts Under the Indian Self-Determination and Education Assistance Act, Subpart F—''Standards for Tribal or Tribal Organization Management Systems,'' 900.35—900.60. For operational provisions applicable to carrying out Self-Governance compacts, please see 42 CFR part 137, Tribal Self-Governance, Subpart I,—''Operational Provisions,'' 137.160—137.220.

III. Eligibility Information

1. Eligibility

''Indian Tribes'' and ''Tribal Organizations'' (T/TOs), as defined by the Indian Health Care Improvement Act (IHCIA), are eligible to apply for the TMG Program. The definitions for each entity type are outlined below.

To be eligible for this FY 2022 funding opportunity for ''New Applicants Only,'' an applicant cannot be an existing TMG awardee under this program.

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

• A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l)): ''Tribal organization'' means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit Tribal Resolutions from the Tribes to be served.

Please note that Tribes prohibited from contracting pursuant to the ISDEAA are not eligible for the TMG program. See section 424(a) of the Consolidated Appropriations Act, 2014, Public Law 113–76, as amended by section 428 of the Consolidated Appropriations Act, 2018, Public Law 115–141, and section 1201 of the Consolidated Appropriations Act, 2021, Public Law 116–260.

The program office will notify any applicants deemed ineligible.

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

Additional Required Documentation

Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any applicant selected for funding. An Indian Tribe or Tribal organization that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official signed Tribal Resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Tribes organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization.

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

Additional Required Documentation for Specific TMG Project Types

A. Federally recognized Indian Tribes applying for technical assistance and/or training grants must provide a Tribal Resolution; or a designated Tribal Organization applying on behalf of the Indian Tribe and/or Tribes it intends to serve must also provide a Tribal Resolution.

B. Documentation for Priority I participation requires a copy of the **Federal Register** notice or letter from the Bureau of Indian Affairs verifying establishment of recognized Tribal status within the past 5 years. The date on the documentation must reflect that Federal recognition was received during or after March 2016.

C. Documentation for Priority II participation requires a copy of the most current transmittal letter and Attachment A from the Department of Health and Human Services (HHS), Office of Inspector General (OIG), National External Audit Review Center (NEAR). See ''Funding Priorities'' for more information. If an applicant is unable to provide a copy of the most recent transmittal letter or needs assistance with audit issues, information or technical assistance may be obtained by contacting the IHS Office of Finance and Accounting, Division of Audit by telephone at (301) 443–1270, or toll-free at the NEAR help line at (800) 732–0679 or (816) 426–7720. Recognized Indian Tribes or Tribal Organizations not subject to Single Audit Act requirements must provide a financial statement identifying the Federal dollars received in the footnotes. The financial statement must also identify specific weaknesses/recommendations that will be addressed in the TMG proposal and that are related to 25 CFR part 900, Subpart F—''Standards for Tribal or Tribal Organization Management Systems.''

D. Documentation of Consortium participation—If an applicant is a member of an eligible intertribal consortium, the Tribe must:

1. Identify the consortium.
2. Demonstrate that the Tribe's application does not duplicate or overlap any objectives of the consortium's application.
3. Identify all consortium member Tribes.
4. Identify if any of the consortium member Tribes intend to submit a TMG application of their own.
5. Demonstrate that the consortium's application does not duplicate or overlap any objectives of other consortium members who may be submitting their own TMG application.

Funding Priorities: The IHS has established the following funding priorities for TMG awards:

• PRIORITY I—Any Indian Tribe, or Tribal Organization representing that Indian Tribe, that has received Federal recognition (including restored, funded, or unfunded) within the past 5 years, specifically received during or after March 2016, will be considered Priority I.

• PRIORITY II—T/TOs submitting a new application or a competing continuation application for the sole purpose of addressing audit material weaknesses will be considered Priority II.

Priority II participation is only applicable to the Health Management Structure project type. For more information, see ''Eligible TMG Project Types, Maximum Funding Levels, and Project Periods,'' in Section II.

• PRIORITY III—Eligible Direct Service and T/TOs with a Title I ISDEAA contract with the IHS

submitting a new application or a competing continuation application will be considered Priority III.

• PRIORITY IV—Eligible T/TOs with a Title V ISDEAA compact with the IHS submitting a new application or a competing continuation application will be considered Priority IV.

The funding of approved Priority I applicants will occur before the funding of approved Priority II applicants. Priority II applicants will be funded before approved Priority III applicants. Priority III applicants will be funded before approved Priority IV applicants. Funds will be distributed until depleted.

The following definitions are applicable to the PRIORITY II category:

Audit finding—deficiencies that the auditor is required by 45 CFR 75.516 to report in the schedule of findings and questioned costs.

Material weakness—''Statements on Auditing Standards 115'' defines material weakness as a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Significant deficiency—''Statements on Auditing Standards 115,'' defines significant deficiency as a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

The audit findings are identified in Attachment A of the transmittal letter received from the HHS/OIG/NEAR. Please identify the material weaknesses to be addressed by underlining the item(s) listed in Attachment A.

T/TOs not subject to Single Audit Act requirements must provide a financial statement identifying the Federal dollars received in the footnotes. The financial statement should also identify specific weaknesses/recommendations that will be addressed in the TMG proposal and that are related to 25 CFR part 900, ''Subpart F, ''Standards for Tribal and Tribal Organization Management Systems.''

Note: A decision to award a TMG does not represent a determination from the IHS regarding the T/TO's eligibility to contract for a specific PFSA under the ISDEAA. An application for a TMG does not constitute a contract proposal.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

Mandatory documents for all applicants include:

• Abstract (one page) summarizing the project.

• Application forms:

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs.

3. SF–424B, Assurances—Non-Construction Programs.

• Project Narrative (not to exceed 15 pages). See Section IV.2.A, Project Narrative for instructions.

1. Background information on the organization.

2. Proposed scope of work, objectives, and activities that provide a description of what the applicant plans to accomplish.

• Budget Justification and Narrative (not to exceed five pages). See Section IV.2.B, Budget Narrative for instructions.

• One-page Timeframe Chart.

• Tribal Resolution(s).

• Letters of Support from organization's Board of Directors (if applicable).

• 501(c)(3) Certificate (if applicable).

• Biographical sketches for all Key Personnel.

• Contractor/Consultant resumes or qualifications and scope of work.

• Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.

• Certification Regarding Lobbying (GG-Lobbying Form).

• Copy of current Negotiated Indirect Cost (IDC) rate agreement (required in order to receive IDC).

• Organizational Chart (optional).

• Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://harvester.census.gov/facdissem/Main.aspx.*

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate document that is no more than 15 pages and must: (1) have consecutively numbered pages; (2) use black font 12 points or larger; (3) be single-spaced; and (4) be formatted to fit standard letter paper (8–1/2 x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and will not be reviewed. The 15-page limit for the narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget justifications, narratives, and/or other items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

Part 1: Program Information (limit—2 pages)

Section 1: Needs

Describe how the T/TO has determined the need to either enhance or develop Tribal management capability to either assume PFSAs or not in the interest of Self-Determination. Note the progression of previous TMG projects/awards if applicable.

Part 2: Program Planning and Evaluation (limit—11 pages)

Section 1: Program Plans

Describe fully and clearly the direction the T/TO plans to take with the selected TMG Project type in addressing their health management infrastructure, including how the T/TO's plans to demonstrate improved health and services to the community or communities it serves. Include proposed timelines.

Section 2: Program Evaluation

Describe fully and clearly the improvements that will be made by the T/TO that will impact their management capability or prepare them for future improvements to their organization that will allow them to manage their health care system and identify the anticipated or expected benefits for the Tribe.

Part 3: Program Report (limit—2 pages)

Section 1: Describe your organization's significant program activities and accomplishments over the past 5 years associated with the goals of this announcement.

Please identify and describe significant program achievements associated with the delivery of quality health services. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

B. Budget Narrative (limit—5 pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs). The budget narrative can include a more detailed spreadsheet than is provided by the SF–424A. The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. For subsequent budget years (see Multi-Year Project Requirements in Section V.1, Application Review Information, Evaluation Criteria), the narrative should highlight the changes from year 1 or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), Acting Director, DGM, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one grant may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Paul Gettys, Acting Director, DGM. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Paul.Gettys@ihs.gov*. The waiver request must: (1) Be documented in writing (emails are acceptable) before submitting an application by some other method, and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to the DGM. Applications that are submitted without a copy of the signed waiver from the Acting Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B that uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through *https://fedgov.dnb.com/webform,* or call (866) 705–5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier

to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that are not registered with SAM must have a DUNS number first, then access the SAM online registration through the SAM home page at *https://sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov*.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/*.

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include only the first year of activities; information for multi-year projects should be included as a separate document. See ''Multi-year Project Requirements'' at the end of this section for more information. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the project narrative. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Introduction and Need for Assistance (20 points)

1. Describe the T/TO's current health operation. Include a list of programs and services that are currently provided (*e.g.,* federally funded, state funded, etc.), information regarding technologies currently used (*e.g.,* hardware, software, services, etc.), and identify the source(s) of technical support for those technologies (*i.e.,* Tribal staff, Area office IHS, vendor, etc.). Include information regarding whether the T/TO has a health department and/or health board and how long it has been operating.

2. Describe the population to be served by the proposed project. Include the total number of eligible IHS beneficiaries currently using the services.

3. Describe the geographic location of the proposed project, including any geographic barriers to health care users in the area to be served.

4. Identify all TMGs received since FY 2013, dates of funding, and a summary of project accomplishments. State how previous TMG funds facilitated the progression of health development relative to the current proposed project. (Copies of reports will not be accepted.)

5. Identify the eligible project type and priority group of the applicant.

6. Explain the need or reason for the proposed TMG project. Identify specific weaknesses and gaps in service or infrastructure that will be addressed by the proposal. Explain how these gaps and weaknesses will be assessed.

7. If the proposed TMG project includes information technology (*i.e.,* hardware, software, etc.), provide further information regarding measures that have occurred or will occur to ensure the proposed project will not create other gaps in services or infrastructure (*e.g.,* negatively affect or impact IHS interface capability, Government Performance and Results Act reporting requirements, contract reporting requirements, Information Technology (IT) compatibility, etc.), if applicable.

8. Describe the effect of the proposed TMG project on current programs (*e.g.,* federally funded, state funded, etc.), and, if applicable, on current equipment (*e.g.,* hardware, software, services, etc.). Include the effect of the proposed project on planned or anticipated programs and equipment.

9. Address how the proposed TMG project relates to the purpose of the TMG Program by addressing the appropriate description that follows:

a. Identify whether the T/TO is an IHS Title I contractor. Address if the Self-Determination contract is a master contract of several programs or if individual contracts are used for each program. Include information regarding whether or not the T/TO participates in a consortium contract (*i.e.,* more than one Tribe participating in a contract). Address what programs are currently provided through those contracts and how the proposed TMG project will enhance the organization's capacity to manage the contracts currently in place.

b. Identify if the T/TO is not an IHS Title I contractor. Address how the proposed TMG project will enhance the organization's management capabilities, what programs and services the organization is currently seeking to contract, and an anticipated date for contract.

c. Identify if the T/TO is an IHS Title V compactor. Address when the T/TO entered into the compact and how the proposed project will further enhance the organization's management capabilities.

B. Project Objective(s), Work Plan, and Approach (40 points)

1. The proposed project objectives must be:

a. Measureable and (if applicable) quantifiable;

b. results-oriented;

c. time-limited.

Example: By installing new third-party billing software, the Tribe proposes to increase the number of claims processed by 15 percent within 12 months.

2. For each objective, address how the proposed TMG project will result in change or improvement in program operations or processes. Also address what tangible products are expected from the project (*i.e.,* policies and procedures manual, health plan, etc.).

3. Address the extent to which the proposed project will build local capacity to provide, improve, or expand services that address the needs of the target population.

4. Submit a work plan in the Other Attachments that includes the following:

a. Provide action steps on a timeline for accomplishing the proposed project objectives.

b. Identify who will perform the action steps.

c. Identify who will supervise the action steps taken.

d. Identify tangible products that will be produced during and at the end of the proposed project.

e. Identify who will accept and/or approve work products during the duration of the proposed TMG project and at the end of the proposed project.

f. Include a description of any training activities proposed. This description will identify the target audience and training personnel.

g. Include work plan evaluation activities.

5. If consultants or contractors will be used during the proposed project, please complete the following information in their scope of work. (If consultants or contractors will not be used, please make note in this section):

a. Educational requirements.

b. Desired qualifications and work experience.

c. Expected work products to be delivered, including a timeline.

If potential consultants or contractors have already been identified, please

upload a resume for each consultant or contractor in the Other Attachments in *Grants.gov*.

6. Describe updates that will be required for the continued success of the proposed TMG project (*i.e.,* revision of policies/procedures, upgrades, technical support, etc.). Include a timeline of anticipated updates and source of funding to conduct the update and/or maintenance.

C. Program Evaluation (20 points)

Each proposed objective requires an evaluation activity to assess its progression and ensure completion. This should be included in the work plan.

Describe the proposal's plan to evaluate project processes and outcomes. Outcome evaluation relates to the results identified in the objectives. Process evaluation relates to the work plan and activities of the project.

1. For outcome evaluation, describe:

a. The criteria for determining whether each objective was met.

b. The data to be collected to determine whether the objective was met.

c. Data collection intervals.

d. Who will be responsible for collecting the data and their qualifications.

e. Data analysis method.

f. How the results will be used.

2. For process evaluation, describe:

a. The process for monitoring and assessing potential problems, then identifying quality improvements.

b. Who will be responsible for monitoring and managing project improvements based on results of ongoing process improvements and their qualifications.

c. Provide details with regards to the ways ongoing monitoring will be used to improve the project.

d. Describe any products, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.

e. How the T/TO will document what is learned throughout the project period.

3. Describe any additional evaluation efforts planned after the grant period has ended.

4. Describe the ultimate benefit to the T/TO that is expected to result from this project. An example would be a T/TO's ability to expand preventive health services because of increased billing and third-party payments.

D. Organizational Capabilities, Key Personnel, and Qualifications (15 points)

This section outlines the T/TO's capacity to complete the proposal outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for completion of the proposed plan.

1. Provide the organizational structure of the T/TO.

2. Provide information regarding plans to obtain management systems if a T/TO does not have an established management system currently in place that complies with 25 CFR part 900, subpart F, ''Standards for Tribal or Tribal Organization Management Systems.'' State if management systems are already in place and how long the systems have been in place.

3. Describe the ability of the T/TO to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

4. Describe equipment (*e.g.,* fax machine, telephone, computer, etc.) and facility space (*i.e.,* office space) that will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased through the grant.

5. List key project personnel and their titles in the work plan.

6. Provide the position descriptions and resumes for all key personnel as Other Attachments in *Grants.gov*. The included position descriptions should: (1) Clearly describe each position's duties; and (2) indicate desired qualifications and project associated experience. Each resume must include a statement indicating that the proposed key personnel is explicitly qualified to carry out the proposed project activities. If no current candidate for a position exists, please provide a statement to that effect in the Other Attachments.

7. If an individual is partially funded by this grant, indicate the percentage of his or her time to be allocated to the project and identify the resources used to fund the remainder of that individual's salary.

8. Address how the T/TO will sustain the proposal created positions after the grant expires. Please indicate if the project requires additional personnel (*i.e.,* IT support, etc.). If no additional personnel are required, please indicate that in this section.

E. Categorical Budget and Budget Justification (5 points)

1. Provide a categorical budget for the first budget period.

2. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the Other Attachments.

3. Provide a narrative justification explaining why each categorical budget line item is necessary and relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*e.g.,* equipment specifications, etc.).

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional documents can be uploaded as Other Attachments in *Grants.gov*. These can include:

- Work plan, logic model, and/or timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, project period limit) will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Office of Direct Service and Contracting Tribes within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and

conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

NOTE: Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2020-title45-voll/pdf/CFR-2020-title45-voll-part75.pdf.*
- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at *https://www.ecfr.gov/cgi-bin/retrieveECFR?&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75_1372#se45.1.75_1372.*

C. Grants Policy:

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' located at 45 CFR part 75 subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' located at 45 CFR part 75 subpart F.

F. As of August 13, 2020, 2 CFR 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs, ''any non-Federal entity (NFE) [*i.e.,* applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.'' Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant Federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in Section VII for the systems contact information. The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services at *https://pms.psc.gov.* Failure to submit timely reports may result in adverse award actions blocking access to funds.

Federal Financial Reports are due 30 days after the end of each budget period, and a final report is due 90 days after the end of the Period of Performance. Grantees are responsible and accountable for reporting accurate

information on all required reports: The Progress Reports, the Federal Cash Transaction Report, and the Federal Financial Report.

C. Federal Sub-award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards. The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

D. Compliance with Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Should you successfully compete for an award, recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex (including gender identity, sexual orientation, and pregnancy). This includes ensuring programs are accessible to persons with limited English proficiency and persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html.*

• Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.*

• For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/ocr/civilrights/understanding/disability/index.html.*

• HHS funded health and education programs must be administered in an environment free of sexual harassment. See *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html.*

• For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.*

E. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://www.fapiis.gov* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Paul Gettys, Acting Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *Paul.Gettys@ihs.gov.*

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/*, (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov.*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to:

Terri Schmidt, Director, Office of Direct Service and Contracting Tribes, Indian Health Service, 5600 Fishers Lane, Mail Stop: 08E17, Rockville, MD 20857, Phone: (301) 443–1104, Email: *terri.schmidt@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to:

Sheila A.L. Miller, Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (240) 535–9308, Email: *sheila.miller@ihs.gov.*

3. Questions on systems matters may be directed to:

Paul Gettys, Acting Director, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Email: *Paul.Gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Elizabeth A. Fowler,

Acting Deputy Director, Indian Health Service.

[FR Doc. 2022–01322 Filed 1–24–22; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Cardiovascular Disease Risk and Diet Induced Circadian Dysfunction.

Date: March 3, 2022.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Shelley S. Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–T, Bethesda, MD 20892–7924, (301) 827–7984, *ssehnert@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Career Development Program to Promote Diversity in Health Research.

Date: March 4, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Sun Saret, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–S, Bethesda, MD 20892, (301) 435–0270, *sun.saret@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Early Phase Clinical Trials (R61, R33).

Date: March 7, 2022.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Manoj Kumar Valiyaveettil, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–R, Bethesda, MD 20817, (301) 402–1616, *manoj.valiyaveettil@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Hemophilia A Analytical Cohort Research Program (UG3/UH3).

Date: March 22, 2022.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817, (Virtual Meeting).

Contact Person: Manoj Kumar Valiyaveettil, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–R, Bethesda, MD 20817, (301) 402–1616, *manoj.valiyaveettil@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Limited Competition: Small Grant Program for NHLBI K01/K08/K23 Recipients (R03—Clinical Trial Optional).

Date: March 23, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kazuyo Kegan, AB, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–S, Bethesda, MD 20817, (301) 435–0270, *kazuyo.kegan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 19, 2022.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01367 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Modular Budget Research Project Grant for NIH Nurse Scientist Scholars.

Date: February 10, 2022.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ming Yan, MD, Ph.D., Scientific Review Officer, Immunology (IMM), DPPS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4205, Bethesda, MD 20892, *yanming@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: February 24, 2022.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Blvd., Bethesda, MD 22150 (Virtual Meeting).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 19, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01366 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies B Study Section.

Date: February 17–18, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Training in Veterinary and Comparative Medicine.

Date: February 17, 2022.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ronit I. Yarden, Ph.D., MHSA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 904B, Bethesda, MD 20892, (202) 552–9939, *yardenri@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Promotion in Communities Study Section.

Date: February 22–23, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Helena Eryam Dagadu, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20892, 301–435–1266, *dagaduhe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–21–027: The Human BioMolecular Atlas Program (HuBMAP) Demonstration Project (U01).

Date: February 22, 2022.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: February 23–24, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mufeng Li, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–5653, *limuf@nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.

Date: February 24–25, 2022.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

Date: February 24–25, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *ingrahamrh@mail.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genomics, Computational Biology and Technology Study Section.

Date: February 24–25, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301–827–7088, *methode.bacanamwo@nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

Date: February 24–25, 2022.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Janetta Lun, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 1007E, Bethesda, MD 20892, (301) 435–5877, *janetta.lun@nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: February 24–25, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Audrey O. Lau, MPH, Ph.D., Chief Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4088, *audrey.lau@nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Etiology Study Section.

Date: March 1–2, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarita Kandula Sastry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Bethesda, MD 20782, 301–402–4788, *sarita.sastry@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

January 19, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01358 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on March 8, 2022. The topic for this meeting will be ''Opportunities for Research Supported by the Special Statutory Funding Program for Type 1 Diabetes Research.'' The meeting is open to the public.

DATES: The meeting will be held on March 8, 2022 from 8:30 a.m. to 4:45 p.m. EDT.

ADDRESSES: The meeting will be held via an online video conferencing platform. Virtual attendance for the meeting will be accessible to members of the public who register at *https://www.scgcorp.com/dmicc2022/Registration* at least 5 days prior to the workshop.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, including a draft agenda, which will be posted when available, see the DMICC website, *www.diabetescommittee.gov,* or contact Dr. William Cefalu, Director, Division of Diabetes, Endocrinology, and Metabolic Diseases, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Democracy 2, Room 6037, Bethesda, MD 20892, telephone: 301–435–1011; email: *dmicc@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S.C. 285c–3, the DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) and comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The March 8, 2022 DMICC meeting will focus on ''Opportunities for Research Supported by the Special Statutory Funding Program for Type 1 Diabetes Research.'' Any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, there will not be time on the agenda for oral comments from members of the public.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC website, *www.diabetescommittee.gov.*

Dated: January 19, 2022.

Bruce Tibor Roberts,

Executive Secretary, DMICC, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2022–01345 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: March 16, 2022.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Cancer Institute, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Sheila A. Prindiville, M.D., M.P.H., Director, Coordinating Center for Clinical Trials, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 19, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01329 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Emergency Awards: Antiviral Drug Discovery (AViDD) Centers for Pathogens of Pandemic Concern (U19 Clinical Trials Not Allowed).

Date: February 9–17, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 301–435–0903, *saadisoh@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 19, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01364 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development, Initial Review Group; Health, Behavior, and Context Study Section.

Date: February 28, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Kimberly L. Houston, MD, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892, (301) 827–4902, *kimberly.houston@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 20, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01424 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: February 22–23, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Karen Elizabeth Seymour, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 1000–E, Bethesda, MD 20892, (301) 443–9485, *karen.seymour@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pathophysiology of Obesity and Metabolic Disease Study Section.

Date: February 24–25, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raul Rojas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, Bethesda, MD 20892, (301) 451–6319, *rojasr@mail.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology A Study Section.

Date: February 24–25, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437–3478, *wieschd@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Services: Quality and Effectiveness Study Section.

Date: February 24–25, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Angela Denise Thrasher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000J, Bethesda, MD 20892, (301) 480–6894, *thrasherad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR20–117: Maximizing Investigators' Research Award (MIRA) for Early Stage Investigators (R35—Clinical Trial Optional).

Date: February 28–March 1, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rebecca Catherine Burgess, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–8034, *rebecca.burgess@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA RM 21–025: Faculty Institutional Recruitment for Sustainable Transformation (FIRST) Program.

Date: February 28–March 1, 2022.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wenjuan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 480–8667, *wangw22@mail.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: March 2–3, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.

Date: March 2–3, 2022.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michelle Marie Arnold, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 451–7806, *michelle.arnold@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 20, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01421 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Development and Commercialization of Regulatory T-Cell Therapies for the Treatment of Multiple Sclerosis (MS)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice to TeraImmune, Inc. (''TeraImmune'') located in Gaithersburg, Maryland, USA.

DATES: Only written comments and/or applications for a license which are received by the National Institute of Allergy and Infectious Diseases' Technology Transfer and Intellectual Property Office on or before February 9, 2022 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Dr. Yogikala Prabhu, Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Suite 6D, MSC9804, Rockville, MD 20852–9804 Telephone: (301) 496–2644; Facsimile: (240) 627–3117; Email: *prabhuyo@niaid.nih.gov*.

SUPPLEMENTARY INFORMATION:

Intellectual Property

- U.S. Patent 9,481,866, entitled ''Methods of Producing T Cell Populations Enriched for Stable Regulatory T-Cells'' [HHS Reference No. E–279–2011/0–US–02]
- U.S. Patent 11,060,059, entitled ''Methods of Producing T Cell Populations Enriched for Stable Regulatory T-Cells'' [HHS Reference No. E–279–2011/0–US–03]
- U.S. Divisional Application No. 17/371,589—filed July 9, 2021, entitled ''Methods of Producing T Cell Populations Enriched for Stable Regulatory T-Cells'' [HHS Reference No. E–279–2011/0–US–04]

The patent and patent application rights in these inventions have been assigned to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to: ''Use of the Licensed Patent Rights to develop and commercialize Treg cell therapies for the treatment of multiple sclerosis (MS).''

The technology is directed to a method for producing or growing cell populations that are enriched for stable, highly suppressive regulatory T cells (Tregs). Tregs are critical in regulating immune system processes that maintain tolerance to self-antigens and prevent immune mediated diseases. The method takes a population of cells comprising stable, regulatory T cells and enriched for specific CD markers, cultures these cells in the presence of interleukin-2, an anti-CD3 antibody, an anti-CD28 antibody, and oligodeoxynucleotides of specified length having a phosphorothioate backbone, and yields the expansion of the initial population of regulatory T-cells. The expanded Tregs may then be used for the treatment of immune-mediated diseases.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, unless the National Institute of Allergy and Infectious Diseases receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent commercialization license.

In response to this notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: January 19, 2022.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2022–01330 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Gabriella Miller Kids First Sequencing Center.

Date: March 21, 2022.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892, (301) 402–8837, *barbara.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 19, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01359 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Member Conflict: Bioengineering, Cellular and Circuit Neuroscience. February 18, 2022, 9:00 a.m. to 1:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 19, 2022, FR Doc 2022–00897, 87 FR 2878.

This meeting is being amended to change the meeting time from 9:00 a.m.–1:00 p.m. to 12:00 p.m.–5:00 p.m. The meeting is closed to the public.

Dated: January 19, 2022.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01365 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Advisory Board.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

A portion of the National Cancer Advisory Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Date: February 10, 2022.

Open: 11:45 a.m. to 12:45 p.m.

Agenda: NCAB Subcommittee Meeting—*Ad Hoc* Subcommittee on Global Cancer Research.

Open: 1:00 p.m.–3:45 p.m.

Agenda: Director's and Program reports and presentations; business of the Board.

Closed: 3:55 p.m.–5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paulette S. Gray, Ph.D., Director, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, 7th Floor, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NCAB: *https://deainfo.nci.nih.gov/advisory/ncab/ncabmeetings.htm,* where an agenda, instructions for accessing the virtual NCAB meetings, and any additional information for the meetings will be posted when available.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 20, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01422 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee.

Date: February 24–25, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, NIDCR, NIH, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan.bhattacharyya@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 20, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01420 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Member Conflict.

Date: February 22, 2022.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137B, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Joanna Kubler-Kielb, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137B, Bethesda, MD 20892, 301–435–6916, *kielbj@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Human Milk as a Biological System (R01 Clinical Trial Optional).

Date: March 21, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710 Rockledge Drive, Room 2137C, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Kimberly L. Houston, MD, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892, 301–827–4902, *kimberly.houston@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 20, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01419 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Study Section.

Date: February 25, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Jolanta Maria Topczewska, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892, (202) 309–7153, *jolanta.topczewska@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 20, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01423 Filed 1–24–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0041; OMB Control Number: 1625–0015]

Information Collection Request to Office of Management and Budget;

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0015, Bridge Permit Application Guide; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before March 28, 2022.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0041] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0041], and must be received by March 28, 2022.

Submitting comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Bridge Permit Application Guide.

OMB Control Number: 1625–0015.

Summary: The collection of information is a request for a bridge permit submitted as an application for approval by the Coast Guard of any proposed bridge project. An applicant must submit to the Coast Guard a letter of application along with letter-size drawings (plans) and maps showing the proposed project and its location.

Need: 33 U.S.C. 401, 491, and 525 authorize the Coast Guard to approve plans and locations for all bridges and causeways that go over navigable waters of the United States.

Forms: None.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden for the period FY18–FY20 is 10,306 hours, which averages to 3,435 hours per year. The previous submission for this request (FY15–FY17) included permit pre-application coordination between the Bridge Program and the applicant that is required as an application is prepared for submission. Recognition of this work more accurately captured the work of the Bridge Program and significantly increased the total burden hours. Unfortunately the Coast Guard was unable to continue to support the antiquated database that was used to capture this data and a new database solution is not expected to be fully operational until 2022, therefore reliable data for the full data period is unavailable. This submission does not include pre-application work and will therefore show a drastic decrease in burden hours from 17,607 to 3,435 due to this omission.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: January 19, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–01409 Filed 1–24–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0042; OMB Control Number 1625–0086]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0086, The Great Lakes Pilotage; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before March 28, 2022.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0042] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management,

telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0042], and must be received by March 28, 2022.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: The Great Lakes Pilotage.

OMB Control Number: 1625–0086.

Summary: The Office of Great Lakes Pilotage is seeking an extension of OMB's current approval for Great Lakes Pilotage data collection requirements for the three U.S. pilot associations it regulate. This extension would require continued submission of data to an electronic collection system and Form CG–4509. This system is identified as the Great Lakes Pilot Management System which replaced the manual paper submissions used to collect data on bridge hours, vessel delay, vessel cancellation, pilot travel and administration, revenues, pilot availability, and related data. This extension ensures the required data is available in a timely manner and allows immediate accessibility to data crucial from both an operational and rate-making standpoint.

Need: To comply with the statutory and regulatory requirements respecting the rate-making and oversight functions imposed upon the agency.

Forms: CG–4509, Application for Registration as United States Registered Pilot.

Respondents: The three U.S. pilot associations regulated by the Office of Great Lakes Pilotage and members of the public applying to become Great Lakes Registered Pilots.

Frequency: Daily, Weekly, Monthly, Quarterly, Semi-annually, Annually, On occasion; frequency dictated by marine traffic levels and association staffing.

Hour Burden Estimate: The estimated burden increased to 1,214 hours a year. This increase is an update due to increased traffic on the Great Lakes and better record keeping in the past four years. The information requested from the respondents has not changed.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: January 19, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–01407 Filed 1–24–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0006; OMB No. 1660–NW133]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for Civil Rights and Equity

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-day notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's collection of demographic characteristics of those who apply for the Agency's programs or disaster assistance.

DATES: Comments must be submitted on or before March 28, 2022.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0006. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Thompson, Supervisory Emergency Management Specialist, Recovery Directorate, Federal Emergency Management Agency, 540–686–3602, *Brian.Thompson6@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to collect demographic information from those who apply for

benefits to improve its approach to ensuring compliance with its civil rights, nondiscrimination and equity requirements, and obligations as outlined in federal civil rights laws such as Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). Such demographic data concerning individuals who participate in or benefit from the Agency's programs and activities will increase FEMA's ability evaluate the accessibility and distributional equity of their programs and then make alterations or pivot based upon identified areas of concern, thereby demonstrating compliance with civil rights laws.

Collection of Information

Title: Generic Clearance for Civil Rights and Equity.

Type of Information Collection: New information collection.

OMB Number: 1660–NW133.

FEMA Forms: Under the Generic Clearance, each Federal Emergency Management Agency component will submit their specific forms for the collection of demographics. FEMA Form: FF–256–FY–21–100, Generic Clearance Civil Rights and Equity. The Agency is prepared to add these questions to the Individuals and Households program registration, FF–104–FY–21–123 (formerly FEMA Form 009–0–1T (English)), Tele-Registration, Disaster Assistance Registration, FF–104–FY–21–125 (formerly FEMA Form 009–0–1Int (English)), internet, Disaster Assistance Registration, FF–104–FY–21–122 (formerly FEMA Form 009–0–1 (English)), Paper Application/Disaster Assistance Registration. The demographic data will help the Individuals and Households program improve operational outcomes for vulnerable communities by using analysis of demographic data against program outcomes to evaluate whether any disparities in eligibility determinations appear to impact vulnerable communities. FEMA would then use this data to determine how to improve service delivery for all survivors. FEMA expects a burden of no more than 5 minutes per registration to answer the additional questions, with the entire estimated annual burden outlined below.

Abstract: The Federal Emergency Management Agency will use the demographic characteristics collected from applicants and beneficiaries to assess its civil rights, nondiscrimination and equity requirements, and obligations as outlined in federal civil rights laws such as the Civil Rights Act, Rehabilitation Act, and the Stafford Act.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 938,800.

Estimated Number of Responses: 938,800.

Estimated Total Annual Burden Hours: 78,202.

Estimated Total Annual Respondent Cost: $3,069,429.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $3,814,696.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent L. Brown,

Records Management Branch, Team Lead, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–01314 Filed 1–24–22; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R3–ES–2021–0167; FXES11140300000–212]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Ford Ridge Wind Project, Ford County, Illinois; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents; request for comment and information.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Ford Ridge Wind Farm LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act, for its Ford Ridge Wind Project (project). If approved, the ITP would be for a 6-year period and would authorize the incidental take of an endangered species, the Indiana bat, and a threatened species, the northern long-eared bat. The applicant has prepared a habitat conservation plan that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the Indiana bat and northern long-eared bat. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also able for public review.

DATES: We will accept comments received or postmarked on or before February 24, 2022.

ADDRESSES: *Document availability:*

Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS–R3–ES–2021–0167 at *http://www.regulations.gov.*

Comment submission: In your comment, please specify whether your comment addresses the proposed HCP, draft environmental action statement, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Online: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R3–ES–2021–0167.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2021–0167; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Kraig McPeek, Field Supervisor, Illinois-Iowa Ecological Services Field Office, by email at *kraig_mcpeek@fws.gov* or telephone at 309–757–5800, extension 202; or Andrew Horton, Regional HCP Coordinator, Interior

Region 3, by email at *andrew_horton@fws.gov* or telephone at 612–713–5337.

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, have received an application from Ford Ridge Wind Farm LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*) incidental to the operation of 43 wind turbines with a total generating capacity of 121 megawatts (MW) at the Ford Ridge Wind Project in Ford County, Illinois. While the ITP is for 6 years, the operational life of most new wind energy facilities is 30 years, and intensive monitoring conducted during this permit term will inform the need for future avoidance or a new long-term ITP for the remaining life of the project that will comply with a new NEPA analysis and habitat conservation plan (HCP). The applicant has prepared an HCP that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the covered species for the first 6 years. We request public comment on the application, which includes the applicant's proposed HCP, and on the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also able for public review.

Background

Section 9 of the ESA and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species,] or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (16 U.S.C. 1539). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The applicant requests a 6-year ITP to take the federally endangered Indiana bat (*Myotis sodalis*) and threatened northern long-eared bat (*Myotis septentrionalis*). The applicant determined that take is reasonably certain to occur incidental to operation of 43 previously constructed wind turbines in Ford County, Illinois, covering approximately 13,806 acres of private land. The proposed conservation strategy in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of the covered activity on the covered species. The biological goals and objectives are to minimize potential take of the Indiana bat and northern long-eared bat through on-site minimization measures and to provide habitat conservation measures for the two species to offset any impacts from project operations. The HCP provides on-site avoidance and minimization measures, which include turbine operational adjustments. The authorized level of take from the project is 18 Indiana bat and 18 northern long-eared bat over the 6-year permit duration. To offset the impacts of the taking of the species, the applicant will implement one or more of the following mitigation options:

- Purchase credits from an approved conservation bank;
- Contribute to an in-lieu fee mitigation fund;
- Implement permittee-responsible mitigation project; or
- Contribute to a white-nose syndrome treatment fund.

National Environmental Policy Act

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA. The Service has made a preliminary determination that the applicant's project and the proposed mitigation measures would individually and cumulatively have a minor or negligible effect on the covered species and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion, and the HCP would be low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments received to determine whether the permit application meets the requirements of section 10(a) of the ESA. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

Request for Public Comments

The Service invites comments and suggestions from all interested parties on the proposed HCP and screening form during a 30-day public comment period (see **DATES**). In particular, information and comments regarding the following topics are requested:

1. Whether the adaptive management, monitoring, and mitigation provisions in the proposed HCP are sufficient;
2. The requested 6-year ITP term;
3. Any threats to the Indiana bat and the northern long-eared bat that may influence their populations over the life of the ITP that are not addressed in the proposed HCP or screening form;
4. Any new information on white-nose syndrome effects on the Indiana bat and the northern long-eared bat;
5. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and
6. Any other information pertinent to evaluating the effects of the proposed action on the human environment, including those on the Indiana bat and the northern long-eared bat.

Availability of Public Comments

You may submit comments by one of the methods shown under **ADDRESSES**. We will post on *http://regulations.gov* all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While

you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1500–1508; 43 CFR part 46).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2022–01426 Filed 1–24–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[22XD4523WS/DWSN0000.000000/DS61500000/DP.61501]

Invasive Species Advisory Committee; Request for Nominations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council (NISC), proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: Nominations must be received by March 28, 2022.

ADDRESSES: Electronic nomination packages are preferred and should be sent to *invasive_species@ios.doi.gov.* As necessary, hard copy nominations can be sent to Stanley W. Burgiel, Executive Director, National Invasive Species Council (OS/NISC), Regular/Express Mail: Department of the Interior, 1849 C Street NW (Mailstop 3530), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, NISC Operations Director, at (202) 208–4122, or by email at *Kelsey_Brantley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

Executive Order (E.O.) 13112 authorized the National Invasive Species Council (NISC) to provide interdepartmental coordination, planning, and leadership for the Federal Government on the prevention, eradication, and control of invasive species. This authorization was reiterated in E.O. 13751. NISC is currently comprised of the senior-most leadership of twelve Federal Departments/Agencies and four Executive Offices of the President. The Co-chairs of NISC are the Secretaries of the Interior, Agriculture, and Commerce.

NISC provides high-level interdepartmental coordination of Federal invasive species actions and works with other Federal and non-Federal groups to address invasive species issues at the national level. NISC duties, consistent with E.O. 13751, are to provide the vision and national leadership necessary to coordinate, sustain, and expand federal efforts to safeguard the interests of the United States through the prevention, eradication, and control of invasive species, and through the restoration of ecosystems and other assets impacted by invasive species. These duties and work priorities are further identified and outlined in NISC's annual Work Plans.

The Invasive Species Advisory Committee (ISAC) advises NISC. ISAC is chartered under the Federal Advisory Committee Act (FACA; 5 U.S.C. appendix 2). At the request of NISC, ISAC provides advice to NISC members on topics related to NISC's aforementioned duties, as well as emerging issues prioritized by the Administration. As a multi-stakeholder advisory committee, ISAC is intended to play a key role in recommending plans and actions to be taken in different sectors, geographies, and/or scales to accomplish the activities set forth in NISC Work Plans. It is hoped that, collectively, ISAC will represent the views of the broad range of stakeholders, communities, and individuals knowledgeable of and affected by invasive species. NISC is requesting nominations for individuals to serve on the ISAC.

Membership Criteria: Prospective members of ISAC must have knowledge in the prevention, eradication, and/or control of invasive species, as well as demonstrate a high degree of capacity for: Advising individuals in leadership positions, teamwork, project management, tracking relevant Federal government programs and policy making procedures, and networking with and representing their peer-community of interest. ISAC members need not be scientists. Membership from a wide range of disciplines and professional sectors is encouraged.

At this time, we are particularly interested in applications from representatives of: Non-federal government agencies (*e.g.,* state, territorial, tribal, local); academia, research institutions, and scientific societies; the private sector and industry/trade associations; conservation and land management organizations; landowners, farmers, ranchers, foresters, and other resource users; public health specialists; education and outreach specialists; regional organizations; and citizen scientists, recreationists, and other public interest groups. Additionally, ISAC membership will include one representative from each of the following organizations, serving in a non-voting ex officio capacity: The Association of Fish and Wildlife Agencies (AFWA); the National Association of Conservation Districts (NACD); the National Association of State Departments of Agriculture (NASDA); the National Plant Board (NPB); the Native American Fish and Wildlife Society (NAFWS); and the North American Invasive Species Management Association (NAISMA).

After consultation with the other members of NISC, the Secretary of the Interior will appoint members to ISAC. Members will be selected based on their individual qualifications as detailed in their nomination package, as well as the overall need to achieve a balanced representation of viewpoints, subject matter expertise, regional knowledge, and communities of interest.

ISAC will hold approximately one or two in-person or virtual meetings per year. Between meetings, ISAC members are expected to participate in committee and subcommittee work via web-based meetings, teleconferences, and email exchanges. Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of title 5, United States Code. Employees of the Federal Government ARE NOT eligible for nomination or appointment to ISAC.

Individuals who are federally registered lobbyists are ineligible to

serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated special Government employees, rather than being appointed to represent a particular interest.

As appropriate, certain ISAC members may be appointed as special Government employees (SGEs). Please be aware that applicants selected to serve as SGEs will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following website: *https://oge.gov/web/OGE.nsf/OGE%20Forms/2026049D943E0C34852585B6005A23CE/$FILE/OGE%20Form%20450%20Aug%202020_accessible.pdf?open.*

Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements. Please contact (202) 202–208–7960 or *DOI_Ethics@sol.doi.gov* with any questions about the ethics requirements for members appointed as SGEs.

How to Nominate: Nominations should include a resume that provides an adequate description of the nominee's qualifications, including information that will enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the ISAC and permit the Department of the Interior to contact a potential member. Nominees are strongly encouraged to include supporting letters from employers, associations, professional organizations, and/or other organizations that indicate support by a meaningful constituency for the nominee.

All nominations must designate which stakeholder group or community the nominee will represent (for stakeholder groups and required qualifications, please refer to *Membership Criteria* above). All required documents must be submitted in a single nomination package. Incomplete packages, or those with documents submitted piecemeal will not be considered.

Nominations must be received no later than March 28, 2022. Electronic nomination packages are preferred and should be sent to *invasive_species@ios.doi.gov.* As necessary, hard copy nominations can be sent to Stanley W. Burgiel, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street NW (Mailstop 3530), Washington, DC 20240.

Authority: 5 U.S.C. appendix 2.

Stanley W. Burgiel,

Executive Director, National Invasive Species Council.

[FR Doc. 2022–01390 Filed 1–24–22; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–33308; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before January 15, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by February 9, 2022.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 15, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

CALIFORNIA

Orange County

St. Isidore Catholic Church (Latinos in 20th Century California MPS), 10961 Reagan St., Los Alamitos, MP100007440

HAWAII

Hawaii County

Honoka a Catholic Properties–Our Lady of Lourdes Catholic Church (Honoka'a Town, Hawaii MPS), 45–5028 Plumeria St., Honoka'a, MP100007451

INDIANA

Allen County

Calvary United Brethren-Turner Chapel AME Church, 836 East Jefferson Blvd., Fort Wayne, SG100007447

Bartholomew County

Evans Lustron House (Lustron Houses in Indiana), 2121 Pennsylvania St., Columbus, MP100007445

Brown County

Bean Blossom Covered Bridge, Covered Bridge Rd. over Bean Blossom Cr., 7/10 mi. SW of jct. of IN 45 and 135, Bean Blossom vicinity, SG100007441

Delaware County

Hathaway-Parker House, 1116 West Beechwood Ave., Muncie, SG100007444

Hamilton County

Stultz-Stanley House, 209 West Main St., Westfield, SG100007442

Howard County

Douglass School (Indiana's Public Common and High Schools MPS), 1104 North Bell St., Kokomo, MP100007443

Marion County

Garfield Drive Historic District, Roughly bounded by Raymond and Shelby Sts., East Garfield and South Garfield Drs., Indianapolis, SG100007448

Parke County

Davis, William E. and Carolyn, House, 411 Jackson St., Rockville, SG100007446

NEW YORK

Erie County

Fedders Manufacturing Company Factory (Black Rock Planning Neighborhood MPS), 31–71 Tonawanda St., Buffalo, MP100007439

OHIO

Franklin County

Ohio State Office Building (Boundary Increase), 25–145 South Front St., Columbus, BC100007452

A request for removal has been made for the following resource:

OHIO

Franklin County

Hartman Stock Farm Historic District, South of Columbus on US 23, Columbus vicinity, OT74001492

Additional documentation has been received for the following resources:

GEORGIA

Wilkes County

Cedars, The (Additional Documentation), 201 Sims St., Washington, AD72000403

INDIANA

Franklin County

Oldenburg Historic District (Additional Documentation), Bounded roughly by Sycamore, church land woods, Indiana, and Water Sts., and Gehring Farm, Oldenburg, AD83000031

Authority: Section 60.13 of 36 CFR part 60.

Dated: January 18, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2022–01354 Filed 1–24–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Fifth Amendment to Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On January 19, 2022, the Department of Justice lodged a proposed Fifth Amendment to Consent Decree (''Amendment'') with the United States District Court for the Western District of Washington in the lawsuit entitled *United States* v. *Point Ruston, LLC,* Civil Action No. C91–5528 B.

The Amendment constitutes a material modification of a 1997 Consent Decree (''Decree'') concerning the remediation of a portion of the Commencement Bay, Near Shore/Tide Flats Superfund Site in Tacoma and Ruston, Washington (''Site'') by Point Ruston, LLC (''Point Ruston''). The Amendment extends various remedial action deadlines for several parcels and accelerates the cleanup date for several other parcels. If Point Ruston meets certain criteria—timely payment of oversight costs due under the Decree and a demonstration of financing sufficient to fund the development and capping of a discrete parcel—it is eligible for a further extension. As a pre-requisite to the Amendment, Point Ruston was required to install groundwater wells and conduct a sampling event, pay $1,850,448.74 in stipulated penalties with interest, and pay taxes on five parcels at the Site that were in property tax foreclosure.

The publication of this notice opens a period for public comment on the Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Point Ruston, LLC,* D.J. Ref. No. 90–11–2–698. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Amendment may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Amendment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $2.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–01357 Filed 1–24–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act

On January 18, 2022, the Department of Justice signed a proposed Settlement Agreement among the United States, Commonwealth of Kentucky, Nami Resources Company, L.L.C., and Vinland Energy, LLC related to the release of fracking fluids into Acorn Fork, in Knox County, Kentucky. The Settlement Agreement requires the defendant to pay $576,206.27, in three installments, to the U.S. Department of the Interior and $6,016.89 to the Kentucky Energy and Environment Cabinet.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to Settlement Agreement among the United States, Commonwealth of Kentucky, Nami Resources Company, L.L.C., and Vinland Energy, LLC, D.J. Ref. No. 90–11–3–10010. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Settlement Agreement may be examined at and downloaded from this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–01356 Filed 1–24–22; 8:45 am]

BILLING CODE 4410–15–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 revision of the ''The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.'' 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 March 28, 2022.

ADDRESSES: Send comments to Nora Kincaid, 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: Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Expenditure (CE) Surveys collect data on consumer expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and to obtain data for future CPI revisions. The CE Surveys have been ongoing since 1979.

The data from the CE Surveys are used (1) for CPI revisions, (2) to provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation, and (3) to provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. Public and private users of price statistics, including Congress and the economic policymaking agencies of the Executive branch, rely on data collected in the CPI in their day-to-day activities. Hence, data users and policymakers widely accept the need to improve the process used for revising the CPI. If the CE Surveys were not conducted on a continuing basis, current information necessary for more timely, as well as more accurate, updating of the CPI would not be available. In addition, data would not be available to respond to the continuing demand from the public and private sectors for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample is interviewed every three months over four calendar quarters. The sample for each quarter is divided into three panels, with CUs being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures that respondents can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey are either relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills, or insurance premiums.

The Diary (or recordkeeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

II. Current Action

Office of Management and Budget clearance is being sought for the proposed revision of the Consumer Expenditure Surveys: The Quarterly Interview (CEQ) and the Diary (CED).

The continuing CE Surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and obtain data for future CPI revisions.

In the CEQ, CE is seeking clearance to make the below changes.

CE will add point of purchase questions for electrical vehicle charging including the location (street intersection or location such as the name of the shopping center), the city, state, company, and method of payment where electric charging services were obtained. CE will also implement Computer Assisted Recording Instrument (CARI) technology into CE for quality control and research purposes. CARI is a tool available during data collection to capture audio along with response data. With the respondent's consent, a portion of each interview is recorded unobtrusively. The respondent's consent will be obtained through a consent request question asking for the respondent's permission to record the interview for quality control purposes. Lastly, the questions on armed forces will be asked prior to the question on veteran status and individuals who indicate they are in the armed forces will no longer be asked if they are a veteran.

The CED uses both a CAPI instrument and the paper Diary CE–801, Record of Your Daily Expenses. CE plans to update the Diary CE–801 paper Diary as well as implement an online version for non-emergency data collection.

The CED Diary collects information on CU expenditures by asking each selected sample unit to keep two one-week diaries of all expenditures. The Diary is necessary to collect expenditures that respondents may not be able to recall in a retrospective interview. Several changes will be made to the Diary, both the online and the paper version. First the column ''Mark (X) if purchased for someone not on your list'' will be removed. Second, the specific type of alcohol purchased will no longer be collected and the question will be updated to ''Were alcoholic beverages included in total cost?''; the columns for ''wine'', ''beer'', and ''other'' columns will be replaced with ''yes'' and ''no'' columns; and ''Enter the total cost of the alcohol'' will be replaced with ''If YES—How much?'' Third, the column ''Mark (X) one that best describes the type of meal'' will be deleted as the meal type (breakfast, lunch, dinner, snack/drink) is no longer needed. Fourth, instruction on the Diary flap on 'How to Fill Out Your Diary' will be updated to reflect the above changes. The Diary flap instructions will also be updated to indicate that food trucks should be included in 'Mobile Vendor' establishments.

The advance letters for both the CEQ and CED will be updated to reflect changes in the estimated time to complete the interview. These letters explain the nature of the information the BLS wants to collect and the uses of the CEQ or the CED data, as appropriate; informs the respondents of the confidential treatment of all identifying information they provide; requests the respondents' participation in the survey; describes the survey's compliance with the relevant provisions of the Privacy Act and the Office of Management and Budget (OMB) disclosure requirements; and provides a link to the address of the respondent's informational web page.

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: The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Number: 1220–0050.

Type of Review: Revision.

Affected Public: Individuals or Households.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
CEQ—Interview	5,000	4	20,000	68 minutes	22,667
CEQ—Reinterview	2,400	1	2,400	10 minutes	400
CED—Diary (record-keeping)	6,250	2	12,500	60 minutes	12,500
CED—Diary (Interview)	6,250	2	12,500	19 minutes	3,958
CED—Diary (Reinterview)	1,250	1	1,250	10 minutes	208
Totals			48,650		39,733

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 this 19th day of January 2022.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2022–01381 Filed 1–24–22; 8:45 am]

BILLING CODE 4510–24–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting: Board of Directors and Its Six Committees

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 87 FR 2938.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: January 27–28, 2022. On Thursday, January 27, the first Committee meeting will begin at 11:00 a.m. Eastern Standard Time (EST), with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Friday, January 28, the first Committee meeting will begin at 12:00 p.m. EST, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting.

CHANGES IN THE MEETING: The Legal Services Corporation (LSC) is revising the order of Committee meetings taking place on January 27, 2022. LSC also is issuing a correction to the start time of the meeting on January 28, 2022. All other items remain the same. This change is effective January 20, 2022. The updated meeting schedule is as follows:

MEETING SCHEDULE

	Start time (all EST)
Thursday, January 27, 2022:	
Operations and Regulations Committee Meeting	11:00 a.m.
Finance Committee Meeting.	
Governance and Performance Review Committee Meeting.	
Audit Committee Meeting.	
Friday, January 28, 2022:	
Institutional Advancement (IAC) Committee	12:30 p.m.
Institutional Advancement (IAC) Communications Subcommittee Meeting.	
Delivery of Legal Services Committee Meeting.	
Open Board Meeting.	
Closed Board Meeting.	

CONTACT PERSON FOR MORE INFORMATION: Jessica Wechter, Special Assistant to the President, at (202) 295–1626. Questions may also be sent by electronic mail to *wechterj@lsc.gov.*

Dated: January 20, 2022.

Jessica L. Wechter,

Special Assistant to the President, Legal Services Corporation.

[FR Doc. 2022–01476 Filed 1–21–22; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, January 27, 2022.

PLACE: Due to the COVID–19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's

homepage (*www.ncua.gov*) and access the provided webcast link.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Board Briefing, Statutory Inflation Adjustment of Civil Monetary Penalties.
2. NCUA Rules and Regulations, Succession Planning.
3. Board Briefing, 2022 Supervisory Priorities.
4. Board Briefing, Central Liquidity Facility, Expiration of CARES and Consolidated Appropriations Acts Impact.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2022–01468 Filed 1–21–22; 11:15 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0020]

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 December 10, 2021, to January 6, 2022. The last monthly notice was published on December 28, 2021.

DATES: Comments must be filed by February 24, 2022. A request for a hearing or petitions for leave to intervene must be filed by March 28, 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–2022–0020. 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: Karen Zeleznock, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1118, email: *Karen.Zeleznock@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0020, 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–2022–0020.
- *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–2022–0020, 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 below, 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, 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 following table 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)

Duke Energy Progress, LLC; Brunswick Steam Electric Plant, Unit 1; Brunswick County, NC; Duke Energy Progress, LLC; Brunswick Steam Electric Plant, Unit 2; Brunswick County, NC

Docket No(s)	50–325, 50–324.
Application date	December 2, 2021.
ADAMS Accession No	ML21336A716.
Location in Application of NSHC	Pages 1–3 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise the technical specifications (TS) to provide an exception to entering Mode 4 if both required Residual Heat Removal (RHR) shutdown cooling subsystems are inoperable based on TS Task Force (TSTF) Traveler TSTF–580, Revision 1, ''Provide Exception from Entering Mode 4 With No Operable RHR Shutdown Cooling'' (ADAMS Accession No. ML21025A232), and the associated NRC safety evaluation for TSTF–580, Revision 1 (ADAMS Accession No. ML21188A227).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street (DEC45A), Charlotte, NC 28202.
NRC Project Manager, Telephone Number	Luke Haeg, 301–415–0272.

LICENSE AMENDMENT REQUEST(S)—Continued

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Unit 2; Beaver County, PA	
Docket No(s)	50–412.
Application date	September 15, 2021.
ADAMS Accession No	ML21259A090.
Location in Application of NSHC	Pages 5–6 of the Enclosure.
Brief Description of Amendment(s)	Technical Specifications Task Force–547—The proposed amendment removes a required action that currently has a logic error and renumbers another required action.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Rick Giannantonio, General Counsel, Energy Harbor Nuclear Corp., Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.
NRC Project Manager, Telephone Number	Sujata Goetz, 301–415–8004.
Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Units 1 and 2; Beaver County, PA	
Docket No(s)	50–334, 50–412.
Application date	August 29, 2021.
ADAMS Accession No	ML21242A125.
Location in Application of NSHC	Page 17–20 of Enclosure.
Brief Description of Amendment(s)	The proposed amendments would change Technical Specification 3.3.5, ''Loss of Power (LOP) Diesel Generator (DG) Start and Bus Separation Instrumentation,'' by revising Table 3.3.5–1, ''Loss of Power Diesel Generator Start and Bus Separation Instrumentation.''
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	Sujata Goetz, 301–415–8004.
Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; St. Charles Parish, LA	
Docket No(s)	50–382.
Application date	August 25, 2021.
ADAMS Accession No	ML21237A544.
Location in Application of NSHC	Pages 7–9 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendment would update the figures contained in Technical Specification 3.4.8.1, ''Pressure/Temperature Limits,'' for Waterford Steam Electric Station Unit 3 (Waterford 3). The existing pressure/temperature (P/T) limit curves will be extended from 32 to 55 effective full power years for the beltline, extended beltline and nozzle regions. The low temperature overpressure P/T region pressurizer pressure limit is being lowered from the current 554.1 pounds per square inch absolute (psia) to 534 psia to account for three reactor coolant pump operation, as described in Attachment 3 of the license amendment request.
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	Jason Drake, 301–415–8378.
Exelon Generation Company, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL	
Docket No(s)	50–254, 50–265.
Application date	November 16, 2021.
ADAMS Accession No	ML21320A195.
Location in Application of NSHC	Pages 4–5 of Attachment 1, Section 4.3.
Brief Description of Amendment(s)	The proposed amendments would revise control rod scram time limits in Technical Specifications 3.1.4, ''Control Rod Scram Times,'' for Quad Cities Nuclear Power Station, Units 1 and 2, to regain margin for containment overpressure.
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	Booma Venkataraman, 301–415–2934.
Holtec Decommissioning International, LLC and Holtec Indian Point 2, LLC; Indian Point Station Unit Nos. 1 and 2; Westchester County, NY; Holtec Decommissioning International, LLC and Holtec Indian Point 3, LLC; Indian Point Station Unit No. 3; Westchester County, NY	
Docket No(s)	50–247, 50–286, 50–003.
Application date	December 22, 2021.
ADAMS Accession No	ML21356B704.
Location in Application of NSHC	Enclosure 1 Section 5.2.
Brief Description of Amendment(s)	By letter dated December 22, 2021 and in accordance with 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit,'' Holtec Decommissioning International, LLC (HDI), on behalf of Holtec Indian Point (IP) 2, LLC (IP1 & IP2) and Holtec Indian Point 3, LLC (IP3), collectively referred to as Indian Point Energy Center (IPEC)), requests an amendment to Provisional Operating License No. DPR–5 for IP1, Renewed Facility License No. DPR–26 for IP2, and Renewed Facility Operating License No. DPR–64 for IP3. The proposed license amendments would revise the IPEC Emergency Plan and Emergency Action Level scheme for the permanently shutdown and defueled condition at IPEC. The proposed changes are being submitted to the U.S. Nuclear Regulatory Commission for approval prior to implementation, as required under 10 CFR 50.54(q)(4) and 10 CFR part 50, appendix E, section IV.B.2.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Erin Connolly, Corporate Counsel—Legal, Holtec International, Krishna P. Singh Technology Campus, 1 Holtec Blvd., Camden, NJ 08104.
NRC Project Manager, Telephone Number	Zahira Cruz Perez, 301–415–3808.

LICENSE AMENDMENT REQUEST(S)—Continued

Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Units 1 and 2; Goodhue County, MN; Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN	
Docket No(s)	50–282, 50–306, 50–263.
Application date	November 15, 2021.
ADAMS Accession No	ML21320A226.
Location in Application of NSHC	Pages 21–23 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendments would revise the Emergency Plans for Monticello Nuclear Generating Plant and Prairie Island Nuclear Generating Plant, Units 1 and 2. The proposed revisions to the Emergency Plans would adopt a fleet Standard Emergency Plan, replace the existing near-site emergency offsite facilities (EOFs) and their common backup EOFs with a centrally located consolidated EOF at Xcel Energy Headquarters. The proposed amendments would also maintain the emergency notification system function in the site technical support centers rather than transferring the function to the EOF and updates staffing numbers and duties to conform with NUREG–0654 ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401.
NRC Project Manager, Telephone Number	Robert Kuntz, 301–415–3733.
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	December 13, 2021.
ADAMS Accession No	ML21347A385.
Location in Application of NSHC	Pages E–6 through E–8.
Brief Description of Amendment(s)	The proposed license amendment request (LAR) would revise technical specifications (TSs) to adopt TS Task Force (TSTF) TSTF–227, involving clarification to the End of Cycle Reactor Pump Trip (EOC–RPT) Instrumentation TS, and TSTF–297, involving enhancements to Feedwater and Main Turbine High Water Level Trip, EOC–RPT, and Anticipated Transient Without Scram-RPT TS. Specifically, the proposed LAR would add notes and a new required action to allow affected feedwater pump(s) and main turbine valve(s) to be removed from service.
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.
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	December 6, 2021.
ADAMS Accession No	ML21340A255.
Location in Application of NSHC	Pages E–6 through E–8.
Brief Description of Amendment(s)	The proposed license amendment request would revise technical specifications (TSs) to adopt TS Task Force (TSTF)–207–A, Revision 5, ''Completion Time for Restoration of Various Excessive Leakage Rates.''
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.
Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO	
Docket No(s)	50–483.
Application date	December 9, 2021.
ADAMS Accession No	ML21343A092 (Package).
Location in Application of NSHC	Pages 3–5 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendment would modify technical specification (TS) requirements in Callaway Plant, Unit No. 1, TS Sections 1.3 and 3.0 regarding limiting condition for operation and surveillance requirement usage. These changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–529, ''Clarify Use and Application Rules.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jay E. Silberg, Pillsbury Winthrop Shaw Pittman LLP, 1200 17th St. NW, Washington, DC 20036.
NRC Project Manager, Telephone Number	Mahesh Chawla, 301–415–8371.
Virginia Electric and Power Company; Surry Power Station, Units 1 and 2; Surry County, VA	
Docket No(s)	50–280, 50–281.
Application date	September 30, 2021, as supplemented by letter dated November 29, 2021.
ADAMS Accession Nos	ML21277A065, ML21334A169.
Location in Application of NSHC	Pages 14–16 of Attachment 1 included in the September 30, 2021, Submittal.
Brief Description of Amendment(s)	The proposed amendments would revise the Surry Units 1 and 2 Technical Specification, Section 3.4 ''Spray Systems,'' to eliminate the Refueling Water Chemical Addition Tank and allow the use of sodium tetraborate decahydrate to replace sodium hydroxide as a chemical additive (buffer) for containment sump pH control following a loss-of-coolant accident.
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	John Klos, 301–415–5136.

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 following table . 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)

Arizona Public Service Company, et al; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Maricopa County, AZ	
Docket No(s)	50–528, 50–529, 50–530.
Amendment Date	December 22, 2021.
ADAMS Accession No	ML21347A003.
Amendment No(s)	217 (Unit 1), 217 (Unit 2), and 217 (Unit 3).
Brief Description of Amendment(s)	The amendments revised Technical Specification 5.5.16, ''Containment Leakage Rate Testing Program,'' to allow the following: Change the existing Type A integrated leakage rate test program test interval to 15 years in accordance with Nuclear Energy Institute (NEI) Topical Report NEI 94–01, Revision 3–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J [''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors''], and the limitations and conditions specified in NEI 94–01, Revision 2–A; adopt an extension of the containment isolation valve leakage rate testing (Type C) frequency from the 60 months currently permitted by 10 CFR part 50, Appendix J, Option B, to 75 months for Type C leakage rate testing of selected components, in accordance with NEI 94–01, Revision 3–A; adopt the use of American National Standards Institute/American Nuclear Society (ANSI/ANS) 56.8–2002, ''Containment System Leakage Testing Requirements''; and adopt a more conservative allowable test interval extension of 9 months, for Type A, Type B, and Type C leakage rate tests in accordance with NEI 94–01, Revision 3–A.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, SC	
Docket No(s)	50–395.
Amendment Date	December 28, 2021.
ADAMS Accession No	ML21319A262.
Amendment No(s)	220.
Brief Description of Amendment(s)	The amendment revised the Virgil C. Summer Nuclear Station, Unit 1, Technical Specification 6.3, ''Unit Staff Qualifications,'' by relocating the unit staff qualifications to the Dominion Energy Nuclear Facility Quality Assurance Program Description consistent with guidance contained in the NRC Administrative Letter 95–06, ''Relocation of Technical Specification Administrative Controls to Quality Assurance.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2; Pope County, AR	
Docket No(s)	50–368.
Amendment Date	December 17, 2021.
ADAMS Accession No	ML21225A055.
Amendment No(s)	327.
Brief Description of Amendment(s)	The amendment revised the Arkansas Nuclear One, Unit 2 technical specifications (TSs) to include the provisions of Limiting Condition for Operation (LCO) 3.0.6 in the Improved Standard Technical Specifications. In support of this change, the amendment also added a new Safety Function Determination Program to the Administrative Controls section of the TSs; added new notes and actions that direct entering the actions for the appropriate supported systems; and made changes to LCO 3.0.2.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Exelon Generation Company, LLC; Calvert Cliffs Nuclear Power Plant, Unit 1; Calvert County, MD; Exelon Generation Company, LLC; Calvert Cliffs Nuclear Power Plant, Unit 2; Calvert County, MD	
Docket No(s)	50–317, 50–318.
Amendment Date	December 14, 2021.
ADAMS Accession No	ML21299A005.
Amendment No(s)	340 (Unit 1) and 318 (Unit 2).
Brief Description of Amendment(s)	The amendments revised Technical Specification (TS) 3.5.2, ''ECCS [Emergency Core Cooling System]—Operating,'' TS 3.5.3, ''ECCS—Shutdown,'' and TS 5.5.15, ''Safety Function Determination Program (SFDP).'' The changes also added a new TS, ''Containment Emergency Sump,'' to Section 3.6, ''Containment Systems.'' The changes are based on Technical Specifications Task Force Traveler TSTF–567, Revision 1, ''Add Containment Sump TS to Address GSI [Generic Safety Issue]—191 Issues,'' dated August 2, 2017 (ADAMS Accession No. ML17214A813).
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE	
Docket No(s)	50–298.
Amendment Date	December 20, 2021.
ADAMS Accession No	ML21340A236.
Amendment No(s)	270.
Brief Description of Amendment(s)	The amendment revised the Cooper Nuclear Station 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.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.
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)	50–348, 50–364, 50–424, 50–425.
Amendment Date	January 5, 2022.
ADAMS Accession No	ML21316A055.
Amendment No(s)	238 (Farley, Unit 1), 235 (Farley, Unit 2), 211 (Vogtle, Unit 1), and 194 (Vogtle, Unit 2).
Brief Description of Amendment(s)	The amendments revised the Joseph M. Farley, Units 1 and 2, and Vogtle Electric Generating Plant, Units 1 and 2, ''Steam Generator (SG) Program'' and ''Steam Generator (SG) Tube Inspection Report'' technical specifications based on Technical Specifications Task Force (TSTF) Traveler TSTF 577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections'' (TSTF 577) (ADAMS Accession No. ML21060B434), and the associated NRC staff safety evaluation of TSTF 577 (ADAMS Accession No. ML21098A188). The amendments were processed under the Consolidated Line Item Improvement Process.
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	December 16, 2021.
ADAMS Accession No	ML21271A137.
Amendment No(s)	150 (Unit 1) and 58 (Unit 2).
Brief Description of Amendment(s)	The amendments revised Watts Bar Nuclear Plant, Units 1 and 2 Technical Specification Surveillance Requirement 3.6.15.4, by revising the shield building annulus pressure requirement, replacing the inleakage requirement with a time requirement, and deleting the shield building inleakage requirement of less than or equal to 250 cubic feet per minute.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO	
Docket No(s)	50–483.
Amendment Date	December 29, 2021.
ADAMS Accession No	ML21344A005.
Amendment No(s)	226.
Brief Description of Amendment(s)	The amendment revised the Callaway Renewed Facility Operating License No. NPF 30 to add a new license condition to allow for the implementation of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.''
Public Comments Received as to Proposed NSHC (Yes/No).	Yes.
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.
Amendment Date	December 22, 2021.
ADAMS Accession No	ML21323A174.
Amendment No(s)	289 and 272.
Brief Description of Amendment(s)	The amendments change the requirements of Technical Specification 2.1.1.2 to reflect the peak fuel centerline melt temperature specified in Topical Report WCAP–17642–P–A, Revision 1, ''Westinghouse Performance Analysis and Design Model (PAD5).''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dated: January 11, 2022.

For the Nuclear Regulatory Commission.

Bo M. Pham,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–00765 Filed 1–24–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–341, 50–250, and 50–251; NRC–2020–0110]

Issuance of Multiple Exemptions in Response to COVID–19 Public Health Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued two exemptions in response to requests from two licensees for relief due to the coronavirus 2019 disease (COVID–19) public health emergency (PHE). The exemptions afford these licensees temporary relief from certain requirements under NRC regulations. The NRC is issuing a single notice to announce the issuance of the exemptions.

DATES: During the period from December 9, 2021, to December 30, 2021, the NRC granted two exemptions in response to requests submitted by two licensees from December 6, 2021, to December 30, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0110 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0110. 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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *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: James Danna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7422, email: *James.Danna@nc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

During the period from December 9, 2021, to December 30, 2021, the NRC granted two exemptions in response to requests submitted by two licensees from December 6, 2021, to December 30, 2021. These exemptions temporarily allow the licensees to deviate from certain requirements of chapter 1 of title 10 of the *Code of Federal Regulations* (10 CFR), part 26, ''Fitness for Duty Programs,'' section 26.205, ''Work hours.''

The exemptions from certain requirements of 10 CFR part 26 for DTE Electric Company (for Fermi, Unit 2), and Florida Power & Light Company (for Turkey Point Nuclear Generating, Units 3 and 4) afford these licensees temporary relief from the work-hour control requirements under 10 CFR 26.205(d)(1) through (d)(7). The exemptions from 10 CFR 26.205(d)(1) through (d)(7) ensure that the control of work hours and management of worker fatigue does not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID–19 PHE on maintaining the safe operation of these facilities. Specifically, these licensees have stated that their staffing levels are affected or are expected to be affected by the COVID–19 PHE, and they can no longer meet or likely will not meet the work-hour controls of 10 CFR 26.205(d)(1) through (d)(7). These licensees have committed to effecting site-specific administrative controls for COVID–19 PHE fatigue-management for personnel specified in 10 CFR 26.4(a).

The tables in this notice provide transparency regarding the number and type of exemptions the NRC has issued. Additionally, the NRC publishes tables of approved regulatory actions related to the COVID–19 PHE on its public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/licensing-actions.html.*

II. Availability of Documents

The tables in this notice provide the facility name, docket number, document description, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed in the tables in this notice. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

FERMI, UNIT 2—DOCKET NO. 50–341

Document description	ADAMS accession No.
Fermi, Unit 2—Work Hour Limits Exemption Request due to COVID–19, dated December 6, 2021	ML21340A030
Fermi, Unit 2—Exemption from Specific Requirements of 10 CFR part 26 (EPID L–2020–LLE–0053 [COVID–19]), dated December 9, 2021	ML21340A245

TURKEY POINT NUCLEAR PLANT, UNITS 3 AND 4—DOCKET NOS. 50–250 AND 50–251

Document description	ADAMS accession No.
Turkey Point Nuclear Plant, Units 3 and 4—COVID–19 Related Request for Exemption from part 26 Work Hours Requirements, dated December 30, 2021	ML21364A050

TURKEY POINT NUCLEAR PLANT, UNITS 3 AND 4—DOCKET NOS. 50–250 AND 50–251—Continued

Document description	ADAMS accession No.
Turkey Point Nuclear Plant Units 3 and 4—Exemption from Specific Requirements of 10 CFR part 26, ''Fitness for Duty Programs'' (EPID L–2021–LLE–0058 [COVID–19]), dated December 30, 2021	ML21364A052

Dated: January 20, 2022.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–01373 Filed 1–24–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34477; File No. 812–15215]

MSD Investment, LLC, et al.

January 19, 2022.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment funds and accounts.

APPLICANTS: MSD Investment, Corp., (''Existing Regulated Fund''), MSD Partners, L.P. (''MSD''), MSD Credit Opportunity Master Fund, L.P., MSD Credit Opportunity Master Fund II, L.P., MSD Credit Opportunity Fund, L.P., MSD Credit Opportunity Fund (Cayman), L.P., MSD Credit Opportunity Fund, Ltd., MSD Debt REIT Holdings, L.P., MSDC EIV, LLC, MSD EIV Private, LLC, MSD RCOF TRS, LLC, MSD RCOF TRS (Cayman) LTD., MSD Real Estate Credit Opportunity Fund L.P., MSD Real Estate Credit Opportunity Fund-C L.P., RCOF-C Intermediate (Cayman), L.P, RCOF-C Intermediate, L.P., MSD Special Investments Fund, L.P., MSD SIF Holdings, L.P., MSD Special Investments Fund (Cayman), L.P., MSD SIF (Cayman), L.P., MSD Alpine Credit Opportunity Fund, L.P., MSD SBAFLA Fund, L.P., MSD UK Holdings Limited, MSD UK Holdings Ltd, MSD UK Aggregator Fund, LLC, MSD PCOF SMA 1, LLC, MSD PCOF SMA 2, LLC, MSD RCOF SMA 1, LLC, MSD RCOF SMA 2, LLC, MSD, Private Credit Opportunity Master (ECI) Fund 2, L.P., MSD Private Credit Opportunity Master Fund 2, L.P., MSD Private Credit Opportunity Fund 2, L.P., MSD Private Credit Opportunity Fund (Cayman) 2, L.P., MSD Private Credit Opportunity Fund (Cayman) II, L.P., Intermediate Fund PCOF 2, LLC, MSD PCOF Fund 2, Ltd, Onshore Intermediate Fund PCOF 2, LLC, MSD Onshore PCOF Fund 2, Ltd, MSD Private Credit Opportunity Master (ECI) Fund, L.P., MSD Private Credit Opportunity Master (ECI) Fund II, L.P., MSD Private Credit Opportunity Master Fund, L.P., MSD Private Credit Opportunity Fund, L.P., MSD Private Credit Opportunity Fund (Cayman), L.P., and MSD Private Credit Opportunity Fund II, L.P. (collectively, ''Existing Affiliated Funds'').

FILING DATES: The application was filed on April 1, 2021, and amended on November 18, 2021 and on January 18, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on February 10, 2022, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Robert Simonds, MSD Partners, L.P., *rsimonds@msd.com.*

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Special Counsel, at (202) 551–6764 or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The applicants request an order of the Commission under sections 17(d) and 57(i) and rule 17d–1 thereunder (the ''Order'') to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), a Regulated Fund [1] and one or more other Regulated Funds and/or one or more Affiliated Funds [2] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which a

[1] ''Regulated Funds'' means the Existing Regulated Fund, the Future Regulated Funds and the BDC Downstream Funds (defined below). ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser (and sub-adviser(s), if any) are an Adviser, and (c) that intends to participate in the Co-investment Program. ''Adviser'' means MSD and any Future Adviser. ''Future Adviser'' means any future investment adviser that (i) controls, is controlled by, or is under common control with MSD, (ii) (a) is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') or (b) is a relying adviser of an investment adviser that is registered under the Advisers Act, and that controls, is controlled by, or is under common control with, MSD, and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[2] ''Affiliated Fund'' means any Existing Affiliated Fund, any MSD Proprietary Account (as defined below) and any entity (a) whose investment adviser (and sub-adviser(s), if any) are Advisers, (b) that either (i) would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act or (ii) relies on rule 3a–7 under the Act, (c) that is not a BDC Downstream Fund, and (d) that intends to participate in the Co-Investment Program. ''BDC Downstream Fund'' means, with respect to any Regulated Fund that is a business development company (''BDC''), an entity (i) that the BDC directly or indirectly controls, (ii) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (iii) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, (iv) whose investment adviser (and sub-adviser(s), if any) are an Adviser, (v) that is not a Wholly-Owned Investment Sub and (vi) that intends to participate in the Co-Investment Program (defined below).

Regulated Fund (or its Wholly-Owned Investment Sub (as defined below)) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3]

Applicants

2. The Existing Regulated Fund is an externally managed, non-diversified, closed-end management investment company incorporated in Maryland that will elect to be regulated as a BDC under the Act.[4] The Board [5] of the Existing Regulated Fund will consist of five directors, three of whom are Independent Directors.[6]

3. MSD, a limited partnership under the laws of the state of Delaware, is registered with the Commission as an investment adviser under the Advisers Act.

4. The Existing Affiliated Funds are the investment funds identified in Appendix A to the application. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for section 3(c)(7) of the Act.

5. Any Adviser, and any direct or indirect, wholly- or majority-owned subsidiary of an Adviser, may hold various financial assets in a principal capacity (the ''MSD Proprietary Accounts'').

6. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[7] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

Applicants' Representations

A. Allocation Process

7. Applicants represent that MSD has established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

8. Specifically, applicants state that the Advisers are organized and managed such that investment committees (''Investment Committees'') responsible for evaluating investment opportunities and making investment decisions on behalf of clients are promptly notified of the opportunities. Opportunities for Potential Co-Investment Transactions may arise when investment advisory personnel of an Adviser becomes aware of investment opportunities that may be appropriate for a Regulated Fund and one or more other Regulated Funds and/or one or more Affiliated Funds. If the requested Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [8] and any Board-Established Criteria [9] of a Regulated Fund, the policies and procedures will require that the relevant Investment Committee responsible for such Regulated Fund receive sufficient information to allow such Fund's Adviser to make its independent determination and recommendations

[3] All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application.

[4] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[5] ''Board'' means (i) with respect to a Regulated Fund other than a BDC Downstream Fund, the board of directors (or the equivalent) of the Regulated Fund and (ii) with respect to a BDC Downstream Fund, the Independent Party of the BDC Downstream Fund. ''Independent Party'' means, with respect to a BDC Downstream Fund, (i) if the BDC Downstream Fund has a board of directors (or the equivalent), the board or (ii) if the BDC Downstream Fund does not have a board of directors (or the equivalent), a transaction committee or advisory committee of the BDC Downstream Fund.

[6] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in section 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[7] ''Wholly-Owned Investment Sub'' means an entity (i) that is a wholly-owned subsidiary of a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 95% or more of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and in the case of an SBIC Subsidiary, maintain a license under the Small Business Investment Act of 1958 (''SBA Act'') and issue debentures guaranteed by the Small Business Administration (''SBA'')); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions; and (iv) that (A) would be an investment company but for section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act, or (B) that qualifies as a real estate investment trust within the meaning of section 856 of the Internal Revenue Code because substantially all of its assets would consist of real properties. ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the SBA to operate under the SBA Act as a small business investment company.

[8] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund other than a BDC Downstream Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders, and (ii) with respect to any BDC Downstream Fund, those investment objectives and strategies described in its disclosure documents (including private placement memoranda and reports to equity holders) and organizational documents (including operating agreements).

[9] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify their approval of any Board-Established Criteria, though applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

under the Conditions. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

9. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the applicable Investment Committee will approve the investment and the investment amount. Applicants state further that the applicable Investment Committee will notify the allocation committee that coordinates and facilitates an order submission process with a designated representative of each applicable Investment Committee of a Regulated Fund and Affiliated Fund to the extent such investment is consistent with its Board-Established Criteria and/or falls within its then-current investment objectives and strategies. Prior to the External Submission (as defined below), each proposed order amount may be reviewed and adjusted, in accordance with the applicable Advisers' written allocation policies and procedures, by both the allocation committee, consisting of legal, compliance, and operations personnel and the applicable Adviser's Investment Committee.[10] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[11]

10. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[12] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[13]

B. Follow-On Investments

11. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments[14] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

12. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[15] If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

13. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment[16] or (ii) a Non-Negotiated Follow-On Investment.[17] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part

[10] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of each Adviser.

[11] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a board of directors (or the equivalent), the members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a transaction committee or advisory committee, the committee members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o) and as if the committee members were directors of the fund.

[12] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. ''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act (treating any registered investment company or series thereof as a BDC for this purpose).

[13] The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

[14] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[15] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) In transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[16] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[17] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters. ''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

14. Applicants propose that Dispositions [18] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[19]

15. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [20] or (ii) the securities are Tradable Securities [21] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

16. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

17. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as required under Condition 15.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as modified by rule 57b–1 thereunder, as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) an Adviser that is either MSD or an entity that controls, is controlled by, or under common control with MSD will be the investment adviser (and sub-adviser, if any) to each of the Regulated Funds and the Affiliated Funds; (ii) MSD is the Adviser to, and may be deemed to control the Existing Regulated Fund; and an Adviser will be the investment adviser and sub-adviser to, and may be deemed to control, any Future Regulated Fund; (iii) each BDC Downstream Fund will be deemed to be controlled by its BDC parent and/or its BDC parent's Adviser; and (iv) the Advisers are under common control. Thus, each Regulated Fund and each Affiliated Fund could be deemed to be a person related to a Regulated Fund, or BDC Downstream Fund, in a manner described by section 57(b) and related to the other Regulated Funds in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–

[18] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[19] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[20] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[21] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds. Further, because the BDC Downstream Funds and Wholly-Owned Investment Subs are controlled by the Regulated Funds, the BDC Downstream Funds and Wholly-Owned Investment Subs are subject to section 57(a)(4) (or section 17(d) in the case of Wholly-Owned Investment Subs controlled by Regulated Funds that are registered under the Act) and thus also subject to the provisions of rule 17d–1. In addition, because the MSD Proprietary Accounts will be controlled by an Adviser and, therefore, may be under common control with the Existing Regulated Fund, MSD, and any Future Regulated Funds, the MSD Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by section 17(d) or section 57(b) and also prohibited from participating in the Co-Investment Program.

4. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions*

(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) the interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) the settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection

with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [22] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[23] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[24]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund [25] will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) the participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [26] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

[22] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[23] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[24] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. ''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D). ''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[25] Any MSD Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i) and 9(a)(i).

[26] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements:* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b-1) or rule 17d-1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [27] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

[27] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) the proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[28] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to

[28] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance. In the case of a BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d) The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[29] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[29] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93998; File No. SR–C2–2022–003]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.5 To Improve the Operation of the Rule

January 19, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2022, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') proposes to amend Rule 6.5 to improve the operation of the Rule. The text of the proposed rule change is provided below. (additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe C2 Exchange, Inc.

* * * * *

Rule 6.5. Nullification and Adjustment of Option Transactions Including Obvious Errors

* * * * *

(b) *Theoretical Price.* Upon receipt of a request for review and prior to any review of a transaction execution price, the ''Theoretical Price'' for the option must be determined. For purposes of this Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last NBB just prior to the trade in question with respect to an erroneous sell transaction or the last NBO just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions in subparagraphs (b)(1) through (3) below exists. For purposes of this provision, when a single order received by the Exchange is executed at multiple price levels, the last NBB and last NBO just prior to the trade in question would be the last NBB and last NBO just prior to the Exchange's receipt of the order. The Exchange will rely on this paragraph (b) and Interpretation and Policy .08 of this Rule when determining Theoretical Price.

(1)–(2) No change.

(3) *Wide Quotes.*

(A) The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction, then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question, as set forth in paragraph (b) above.

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

(B) Customer Transactions Occurring Within 10 Seconds or Less After an Opening or Reopening

(i) The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in subparagraph (A) above and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction.

(ii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction, then the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in subparagraph (A) above and there was a bid/ask differential less than the Minimum

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Amount anytime during the 10 seconds after an opening or re-opening.

(iii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds following an opening or reopening, then the Theoretical Price of an option series is the last NBB or NBO just prior to the Customer transaction in question, as set forth in paragraph (b) above.

(iv) Customer transactions occurring more than 10 seconds after an opening or re-opening are subject to subparagraph (A) above.

(c) *Obvious Errors*

(1)–(3) No change.

(4) *Adjust or Bust.* If it is determined that an Obvious Error has occurred, the Exchange will take one of the actions listed below. Upon taking final action, the Exchange will promptly notify both parties to the trade electronically or via telephone.

(A) No change.

(B) *Customer Transactions.* Where at least one party to the Obvious Error is a Customer, *the execution price of the transaction will be adjusted by the Official pursuant to the table immediately above. Any Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in subparagraph (a)(4) above. However, if such adjustment(s) would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price,* the trade will be nullified, subject to subparagraph (C) below.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend Rule 6.5, ''Nullification and Adjustment of Options Transactions including Obvious Errors,'' to improve the operation of the Rule. Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (''LOMSWG'') (collectively, the ''Industry Working Group''), the Exchange proposes: (1) To amend subsection (b)(3) of Rule 6.5 to permit the Exchange to determine the Theoretical Price of a Customer option transaction in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening; and (2) to amend subsection (c)(4)(B) of Rule 6.5 to adjust, rather than nullify, Customer transactions in Obvious Error situations, provided the adjustment does not violate the limit price. The Commission recently approved an identical proposed rule change of NYSE Arca, LLC (''NYSE Arca'').[5] The Exchange understands that other options exchanges will also submit substantively identical proposals to the Commission.

Proposed Change to Subsection (b)(3)

Rule 6.5 has been part of various harmonization efforts by the Industry Working Group.[6] These efforts have often centered around the Theoretical Price for which an options transaction should be compared to determine whether an Obvious Error has occurred. For instance, all options exchanges have adopted language comparable to Rule 6.5, Interpretation and Policy .08,[7] which explains how an exchange is to determine Theoretical Price at the open, when there are no valid quotes, and when there is a wide quote. This includes at times the use of a singular third-party vendor, known as a TP Provider (currently CBOE Livevol, LLC).

Similarly, subsection (b)(3) of Rule 6.5 was previously harmonized across all options exchanges to handle situations where executions occur in markets that are wide (as set forth in the Rule).[8] Under that subsection, the Exchange determines the Theoretical Price if the NBBO for the subject series is wide immediately before execution and a narrow market (as set forth in the Rule) existed ''during the 10 seconds prior to the transaction.'' The Rule goes on to clarify that, should there be no narrow quotes ''during the 10 seconds prior to the transaction,'' the Theoretical Price for the affected series is the NBBO that existed at the time of execution (regardless of its width).

In recent discussions, the Industry Working Group has identified proposed changes to subsection (b)(3) of Rule 6.5 that the Industry Working Group believes would improve the Rule's functioning. Currently, subsection (b)(3) does not permit the Exchange to determine the Theoretical Price unless there is a narrow quote 10 seconds prior to the transaction. However, in the first seconds of trading, there is no 10-second period ''prior to the transaction.'' Further, the Industry Working Group has observed that prices in certain series can be disjointed at the start of trading. Accordingly, the Exchange proposes to provide additional protections to trading in certain circumstances immediately after the opening before liquidity has had a chance to enter the market. The Exchange proposes to amend subsection (b)(3) to allow the Exchange to determine the Theoretical Price in a wide market so long as a narrow market exists at any point during the 10-second period after an opening or re-opening.

Specifically, the Exchange proposes that the existing text of subsection (b)(3) would become subparagraph ''(A).'' The Exchange proposes to add the following heading and text as subparagraph ''(B)'':

(B) *Customer Transactions Occurring Within 10 Seconds or Less After an Opening or Re-Opening.*

(i) The Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in subparagraph (A) above and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction.

(ii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction, then the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the Customer's erroneous transaction was equal to or greater than the Minimum Amount set forth in subparagraph (A) above

[5] *See* Securities Exchange Act Release No. 93818 (December 17, 2021), 86 FR 73009 (December 23, 2021) (SR–NYSEArca–2021–91).

[6] *See* Securities Exchange Act Release Nos. 45900 (May 7, 2015), 80 FR 27392 (May 13, 2015) (SR–C2–2015–012); and 80298 (March 22, 2017), 82 FR 15393 (March 28, 2017) (SR–C2–2017–011).

[7] *See* Securities Exchange Act Release No. 81520 (September 1, 2017), 82 FR 42368 (September 7, 2017) (SR–C2–2017–024).

[8] *See* Securities Exchange Act Release No. 45900 (May 7, 2015), 80 FR 27392 (May 13, 2015) (SR–C2–2015–012).

and there was a bid/ask differential less than the Minimum Amount anytime during the 10 seconds after an opening or re-opening.

(iii) If there was no bid/ask differential less than the Minimum Amount during the 10 seconds following an Opening or Re-Opening, then the Theoretical Price of an option series is the last NBB or NBO just prior to the Customer transaction in question, as set forth in paragraph (b) above.

(iv) Customer transactions occurring more than 10 seconds after an opening or re-opening are subject to subparagraph (A) above.

The following examples illustrate the functioning of the proposed rule change. Consider that the NBBO of a series opens as $0.01 at $4.00. A marketable limit order to buy one contract arrives one second later and is executed at $4.00. In the third second of trading, the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within the 10 seconds prior to execution. Accordingly, under the current rule, the trade would not qualify for obvious error review, in part due to the fact that there was only a single second of trading before the execution. Under the proposal, since a tight market existed at some point in the first 10 seconds of trading (*i.e.,* in the third second), the Exchange would be able to determine the Theoretical Price as provided in Interpretation and Policy .08.

As another example, the NBBO for a series opens as $0.01 at $4.00. In the seventh second of trading, a marketable limit order is received to buy one contract and is executed at $4.00. Five seconds later (*i.e.,* in the twelfth second of trading), the NBBO narrows from $0.01 at $4.00 to $2.00 at $2.10. While the execution occurred in a market with wide widths, there was no tight market within 10 seconds prior to execution. Accordingly, under the current Rule, the trade would not qualify for obvious error review. Under the proposal, since no tight market existed at any point during the first 10 seconds of trading (*i.e.,* the narrow market occurred in the twelfth second), the trade would not qualify for obvious error review.

The proposed rule change would also better harmonize subsection (b)(3) with subsection (b)(1) of Rule 6.5. Under subsection (b)(1), the Exchange is permitted to determine the Theoretical Price for transactions occurring as part of the Opening Process (as defined in Rule 5.31) if there is no NBB or NBO for the affected series just prior to the erroneous transaction. However, under the current version of subsection (b)(3), a core trading transaction could occur in the same wide market but the Exchange would not be permitted to determine the Theoretical Price. Consider an example where, one second after the Exchange opens a selected series, the NBBO is $1.00 at $5.00. At 9:30:03, a customer submits a marketable buy order to the Exchange and pays $5.00. At 9:30:03, a different exchange runs an opening auction that results in a customer paying $5.00 for the same selected series. At 9:30:06, the NBBO changes from $1.00 at $5.00 to $1.35 at $1.45. Under the current version of subsection (b)(3), the Exchange would not be able to determine the Theoretical Price for the trade occurring during core trading. However, the trade on the other exchange could be submitted for review under subsection (b)(1) and that exchange would be able to determine the Theoretical Price. If the proposed change to subsection (b)(3) were approved, both of the trades occurring at 9:30:03 (on the Exchange during core trading and on another exchange via auction) would also be entitled to the same review regarding the same Theoretical Price based upon the same time.

The proposal would not change any obvious error review beyond the first 10 seconds of an opening or re-opening.

Proposed Change to Subsection (c)(4)(B)

The Exchange proposes to amend subsection (c)(4)(B) of Rule 6.5—the ''Adjust or Bust'' rule for Customer transactions in Obvious Error situations—to adjust rather than nullify such orders, provided the adjustment does not violate the Customer's limit price. Currently, the Rule provides that in Obvious Error situations, transactions involving non-Customers should be adjusted, while transactions involving Customers are nullified, unless a certain condition applies.[9] The Industry Working Group has concluded that the treatment of these transactions should be harmonized under the Rule, such that transactions involving Customers may benefit from adjustment, just as non-Customer transactions currently do, except where such adjustment would violate the Customer's limit price; in that instance, the trade would be nullified.

Specifically, the Exchange proposes to amend the text of subsection (c)(4)(B) to add that where at least one party to the Obvious Error is a Customer, ''the execution price of the transaction will be adjusted by the Official pursuant to the table immediately above. Any Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in subparagraph (a)(4) of the Rule. However, if such adjustment(s) would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price,'' the trade will be nullified. The ''table immediately above'' referenced in the proposed text refers to the table at current subsection (c)(4)(A), which provides for the adjustment of prices a specified amount away from the Theoretical Price, rather than adjusting the Theoretical Price.

The Exchange proposes no other changes at this time.

Implementation Date

The Exchange will announce the operative date of the proposed changes in accordance with Rule 1.5.[10] The proposed changes will become operative no sooner than six months from the date the Commission approved the identical NYSE Arca filing[11] in order for the Exchange's implementation of the proposed rule changes to coincide with the implementation of the same changes on all other options exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] 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

[9] Specifically, the current Rule provides at subsection (c)(4)(C) that if a TPH has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of two minutes or less, where at least one party to the Obvious Error is a non-Customer, then the Exchange will apply the non-Customer adjustment criteria found in subsection (c)(4)(A).

[10] Pursuant to Rule 1.5, the Exchange announces to TPHs all determinations it makes pursuant to the Rules via: (1) Specifications, notices, or regulatory circulars with appropriate advanced notice, which are posted on the Exchange's website, or as otherwise provided in the Rules; (2) electronic message; or (3) other communication method as provided in the Rules.

[11] *See* Securities Exchange Act Release No. 93818 (December 17, 2021), 86 FR 73009 (December 23, 2021) (SR–NYSEArca–2021–91).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

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) [14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed change to subsection (b)(3) of Rule 6.5 would 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 provides a method for addressing Obvious Error Customer transactions that occur in a wide market at the opening of trading. Generally, a wide market is an indication of a lack of liquidity in the market such that the market is unreliable. Current subsection (b)(3) recognizes that a persistently wide quote (*i.e.,* more than 10 seconds) should be considered the reliable market regardless of its width but does not address transactions that occur in a wide market in the first seconds of trading, where there is no preceding 10-second period to reference. Accordingly, in the first 10 seconds of trading, there is no opportunity for a wide quote to have persisted for a sufficiently lengthy period such that the market should consider it a reliable market for the purposes of determining an Obvious Error transaction.

The proposed change would rectify this disparity and permit the Exchange to consider whether a narrow quote is present at any time during the 10-second period after an opening or re-opening. The presence of such a narrow quote would indicate that the market has gained sufficient liquidity and that the previous wide market was unreliable, such that it would be appropriate for the Exchange to determine the Theoretical Price of an Obvious Error transaction. In this way, the proposed rule harmonizes the treatment of Customer transactions that execute in an unreliable market at any point of the trading day, by making them uniformly subject to Exchange determination of the Theoretical Price.

The Exchange believes that the proposed change to subsection (c)(4)(B) of the Rule would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by harmonizing the treatment of non-Customer transactions and Customer transactions under the Rule. Under the current Rule, Obvious Error situations involving non-Customer transactions are adjusted, while those involving Customer transactions are generally nullified, unless they meet the additional requirements of subsection (c)(4)(C) (*i.e.,* where a TPH has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of two minutes or less). The proposal would harmonize the treatment of non-Customer and Customer transactions by providing for the adjustment of all such transactions, except where such adjustment would violate the Customer's limit price.

When it proposed the current rule in 2015, the Exchange believed there were sound reasons for treating non-Customer transactions and Customer transactions differently. At the time, the Exchange stated its belief that ''Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts,'' and that nullifying Obvious Error transactions involving Customers would give Customers ''greater protections'' than adjusting such transactions by eliminating the possibility that a Customer's order will be adjusted to a significantly different price. The Exchange also noted its belief that ''Customers are . . . less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.'' [15]

Those assumptions about Customer trading and hedging activity no longer hold. The Exchange and the Industry Working Group believe that over the course of the last five years, Customers that use options have become more sophisticated, as retail broker-dealers have enhanced the trading tools available. Pursuant to OCC data, volumes clearing in the Customer range have expanded from 12,022,163 ADV in 2015 to 35,081,130 ADV in 2021. This increase in trading activity underscores the greater understanding of options by Customers as a trading tool and its use in the markets. Customers who trade options today largely are more educated, have better trading tools, and have better access to financial news than any time prior.[16] The proposed rule would extend the hedging protections currently enjoyed by non-Customers to Customers, by allowing them to maintain an option position at an adjusted price, which would in turn prevent a cascading effect by maintaining the hedge relationship between the option transaction and any other transactions in a related security.

The Exchange believes that extending such hedging protections to Customer transactions would remove impediments to and perfect the mechanism of a free and open market and a national market system and enhance the protection of investors by providing greater certainty of execution for all participants to options transactions. Under the current Rule, a Customer that believes its transaction was executed pursuant to an Obvious Error may be disincentivized from submitting the transaction for review, since during the review process, the Customer would be uncertain whether the trade would be nullified, and if so, whether market conditions would still permit the opportunity to execute a related order at a better price after the nullification ruling is finalized. In contrast, under the proposed rule, the Customer would know that the only likely outcomes of submitting a trade to Obvious Error review would be that the trade would stand or be re-executed at a better price; the trade would only be nullified if the adjustment would violate the order's limit. Similarly, under the current Rule, during the review period, a market maker who traded contra to the Customer would be uncertain if it should retain any position executed to hedge the original trade, or attempt to unwind it, possibly at a significant loss. Under the proposed rule change, this uncertainty is largely eliminated, and the question would be whether the already executed and hedged trade would be adjusted to a better price for the Customer, or if it would stand as originally executed. In this way, the proposed rule enhances the protection of investors and removes impediments to and perfects the mechanism of a free and open market and a national market system.

The proposed rule also addresses the concern the Exchange cited in its 2015 filing that adjusting, rather than nullifying, Customer transactions could lead to a Customer's order being adjusted to a significantly different price. To address that concern, the proposed rule would prevent Customer transactions from being adjusted to a price that violates the order's limit; if the adjustment would violate a Customer's limit, the trade would instead be nullified. The Exchange believes it is in the best interest of

[14] *Id.*

[15] *See* Securities Exchange Act Release No. 45900 (May 7, 2015), 80 FR 27392 (May 13, 2015) (SR–C2–2015–012).

[16] *See* ''Retail Traders Adopt Options En Masse'' by Dan Raju, *available at https://www.nasdaq.com/articles/retail-traders-adopt-options-en-masse-2020-12-08.*

investors to expand the availability of adjustments to Customer transactions in all Obvious Error situations except where the adjustment would violate the Customer's limit price.

Further, the Exchange believes that, with respect to such proposed adjustments to Customer transactions, it is appropriate to use the same form of adjustment as is currently in place with respect to non-Customer transactions as laid out in the table in subsection (c)(4)(A). That is, the Exchange believes that it is appropriate to adjust to prices a specified amount away from the Theoretical Price rather than to adjust the Theoretical Price, even though the Exchange has determined a given trade to be erroneous in nature, because the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an Obvious Error has occurred, additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange believes that providing an adjustment to the Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors, while adjusting to prices a specified amount away from the Theoretical Price would incentivize such behavior.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed change to subsection (b)(3) would apply to all instances of a wide market occurring within the first 10 seconds of trading followed by a narrow market at any point in the subsequent 10-second period, regardless of the types of market participants involved in such transactions. The proposed change to subsection (c)(4)(B) would harmonize the treatment of Obvious Error transactions involving Customers and non-Customers, no matter what type of market participants those parties may be.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is identical to a NYSE Arca proposed rule change recently approved by the Commission.[17] The Exchange anticipates that the other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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[18] and Rule 19b–4(f)(6)[19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will 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–C2–2022–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2022–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2022–003 and should be submitted on or before February 15, 2022.

[17] *See* Securities Exchange Act Release No. 93818 (December 17, 2021), 86 FR 73009 (December 23, 2021) (SR–NYSEArca–2021–91).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01324 Filed 1–24–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94000; File No. SR–EMERALD–2021–38]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Exchange Rule 531 To Provide for a New Service Called the ''High Precision Network Time Signal Service''

January 19, 2022.

On November 19, 2021, MIAX Emerald, LLC (''Exchange'') 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 amend Exchange Rule 531 to provide for a new service called the ''High Precision Network Time Signal Service.'' The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[3] The Commission has not received any comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 21, 2022.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates March 7, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–EMERALD–2021–38).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01326 Filed 1–24–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94003; File No. SR–NYSEArca–2021–65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

January 19, 2022.

On July 19, 2021, NYSE Arca, Inc. (''NYSE Arca'') 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 list and trade shares of the Sprott ESG Gold ETF under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on July 30, 2021.[3] On September 2, 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 approve or disapprove the proposed rule change.[5] On October 27, 2021, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[8] provides that, after initiating disapproval 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 July 30, 2021. January 26, 2022 is 180 days from that date, and March 27, 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. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates March 27, 2022 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2021–65).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01327 Filed 1–24–22; 8:45 am]

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[20] 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. 93698 (December 1, 2021), 86 FR 69301 (December 7, 2021).

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92506 (July 26, 2021), 86 FR 41109.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92867, 86 FR 50568 (September 9, 2021). The Commission designated October 28, 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] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93434, 86 FR 60516 (November 2, 2021).

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93999; File No. SR–GEMX–2022–01]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX's Pricing Schedule at Options 7, Section 3

January 19, 2022.

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 January 4, 2022, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX's Pricing Schedule at Options 7, Section 3, titled ''Regular Order Fees and Rebates.''

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/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

GEMX proposes to amend its Regular Order Fees and Rebates within Options 7, Section 3. Specifically, the Exchange proposes to: (1) Decrease the Priority Customer [3] Tier 1 Taker Fee in Penny Symbols; [4] and (2) eliminate the Tier 5 Maker Rebates and Taker Fees in Penny Symbols and Non-Penny Symbols.[5] Each amendment is described below.

Priority Customer Taker Fee

Currently, Priority Customers are assessed Penny Symbol Taker Fees as follows: A Tier 1 Taker Fee of $0.49 per contract; a Tier 2 Taker Fee of $0.48 per contract; a Tier 3 Taker Fee of $0.48 per contract; a Tier 4 Taker Fee of $0.43 per contract; and a Tier 5 Taker Fee of $0.42 per contract. Other GEMX market participants are assessed higher Penny Symbol Taker Fees as compared to Priority Customers. Market Makers [6] and Non-Nasdaq GEMX Market Makers (FarMM) [7] are assessed Tier 1 through Tier 3 Penny Symbol Taker Fee of $0.50 per contract and a Tier 4 and Tier 5 Penny Symbol Taker Fee of $0.48 per contract.[8] Firm Proprietary [9]/Broker Dealers [10] and Professional Customers [11] are assessed Tier 1 through Tier 3 Penny Symbol Taker Fee of $0.50 per contract and a Tier 4 and Tier 5 Penny Symbol Taker Fee of $0.49 per contract.[12]

At this time, the Exchange proposes to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from $0.49 to $0.48 per contract. The Exchange believes that lowering the Tier 1 Priority Customer Penny Symbol Taker Fee will attract additional order flow to the Exchange. With this proposal, Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees.

Tier 5 Maker Rebates and Taker Fees

Today, GEMX pays the following Tier 5 Penny Symbol Maker Rebates: $0.45 per contract to Market Makers and $0.53 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers are not eligible for Tier 5 Penny Symbol Maker Rebates. Today, GEMX pays the following Tier 5 Non-Penny Symbol Maker Rebates: $0.75 per contract to Market Makers and $1.05 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers are not eligible for Tier 5 Non-Penny Symbol Maker Rebates. Market Maker and Priority Customer orders are eligible for higher Penny and Non-Penny Symbol Maker Rebates based on achieving volume thresholds in Table 1 within Options 7, Section 3.[13]

Today, GEMX assesses the following Tier 5 Penny Symbol Taker Fees: $0.48 per contract to Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), $0.49 per contract to Firm Proprietary/Broker Dealers and Professional Customers, and $0.42 per contract to Priority Customers.[14] Today, GEMX assesses the following Tier 5 Non-Penny Symbol Taker Fees: $0.94 per contract to Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers, and Professional Customers, and $0.82 per contract to Priority Customers.[15]

At this time, the Exchange proposes to eliminate Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in this Pricing Schedule the term ''Priority Customer'' includes ''Retail'' as defined below. *See* Options 7, Section 1.

[4] ''Penny Symbols'' are options overlying all symbols listed on Nasdaq GEMX that are in the Penny Interval Program. *See* Options 7, Section 1.

[5] ''Non-Penny Symbols'' are options overlying all symbols excluding Penny Symbols. *See* Options 7, Section 1.

[6] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[7] A ''Non-Nasdaq GEMX Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. *See* GEMX Options 7, Section 1.

[8] Non-Priority Customer orders are charged the Taker Fee for trades executed during the Opening Process. Priority Customer orders executed during the Opening Process receive the applicable Maker Rebate based on the tier achieved. Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume are charged a Taker Fee of $0.50 per contract for trades executed against a Priority Customer. Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume are charged a Taker Fee of $0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders are charged a Taker Fee of $0.49 per contract for trades executed against a Priority Customer. For purposes of note 13 within Options 7, Section 3, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. *See* notes 4 and 16 of Options 7, Section 3.

[9] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account. *See* GEMX Options 7, Section 1.

[10] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. *See* GEMX Options 7, Section 1.

[11] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* GEMX Options 7, Section 1.

[12] *See* note 8 above.

[13] *See* note 5 of Options 7, Section 3.

[14] *See* note 8 above.

[15] *See* note 8 above.

Fees. The Exchange also proposes to amend the criteria for Tier 4 of the Qualifying Tier Thresholds, within Table 1 of Options 7, Section 3, so that volume that is 2.5% or greater of Customer Total Consolidated Volume and Priority Customer Maker Percentage of Customer Total Consolidated Volume of 1.20% or greater would qualify a GEMX Member for the Tier 4 Penny and Non-Penny Symbol Maker Rebates and Taker Fees.

The elimination of the Tier 5 Penny Symbol Maker Rebates would result in no change as the same Tier 5 Penny Symbol Maker Rebates exist for Tier 4 Penny Symbol Maker Rebates, with the exception of the Penny Symbol Market Maker Rebate. The Tier 5 Penny Symbol Market Maker Rebate is $0.45 per contract, while the Tier 4 Penny Symbol Market Maker Rebate is $0.41 per contract. With this proposal, the highest Penny Symbol Market Maker Rebate that can be achieved would now be $0.41 per contract.

The elimination of the Tier 5 Penny Symbol Taker Fees would result in no change as the same Tier 5 Penny Symbol Taker Fees exist for Tier 4 Penny Symbol Taker Fees, with the exception of the Priority Customer Penny Symbol Taker Fee. The Tier 5 Penny Symbol Priority Customer Taker Fee is $0.42 per contract, while the Tier 4 Penny Symbol Priority Customer Taker Fee is $0.43 per contract. With this proposal, the lowest Penny Symbol Priority Customer Taker Fee that would be assessed would now be $0.43 per contract.

The elimination of the Tier 5 Non-Penny Symbol Maker Rebates and Taker Fees would result in no change as the same Tier 5 Non-Penny Symbol Maker Rebates and Taker Fees exist for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees. As noted, with the amended Tier 4 criteria, a GEMX Member would continue to be able to achieve the same Non-Penny Symbol Maker Rebates and Taker Fees that are currently offered for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees.

With these proposed changes, Priority Customers would continue to be paid the highest Market Rebates and be assessed the lowest Taker Fees in both Penny and Non-Penny Symbols.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[17] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [19] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[20] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [21]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [22] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Priority Customer Taker Fee

The Exchange's proposal to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from $0.49 to $0.48 per contract is reasonable as this decrease would result in a lower Tier 1 Priority Customer Penny Symbol Taker Fee. The Exchange believes that lowering the Tier 1 Priority Customer Penny Symbol Taker Fee will attract additional order flow to the Exchange. With this proposal, Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees.

The Exchange's proposal to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from $0.49 to $0.48 per contract is equitable and not unfairly discriminatory. Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Tier 5 Maker Rebates and Taker Fees

The Exchange's proposal to eliminate Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees is reasonable. The elimination of the Tier 5 Penny Symbol Maker Rebates would result in no change as the same Tier 5 Penny Symbol Maker Rebates exist for Tier 4 Penny Symbol Maker Rebates, with the exception of the Penny Symbol Market Maker Rebate. The Tier 5 Penny Symbol Market Maker Rebate is $0.45 per contract, while the Tier 4 Penny Symbol Market Maker Rebate is $0.41 per contract. With this proposal, the highest Penny Symbol Market Maker Rebate that can be achieved would now be $0.41 per contract. The elimination of the Tier 5 Penny Symbol Taker Fees would result in no change as the same Tier 5 Penny Symbol Taker Fees exist for Tier 4 Penny Symbol Taker Fees, with the exception of the Priority Customer Penny Symbol Taker Fee. The Tier 5 Penny Symbol Priority Customer Taker Fee is $0.42 per contract, while the Tier 4 Penny Symbol Priority Customer Taker Fee is $0.43 per contract. With this proposal, the lowest Priority Customer Penny Symbol Taker Fee that would be assessed would now be $0.43 per contract. Notwithstanding, the decreased Penny Symbol Market Maker Rebate of $0.45 per contract and the increased Priority Customer Penny Symbol Taker Fee of $0.43 per contract, the Exchange believes that the Market and Taker Tier 4 pricing in Penny Symbols will continue to attract order flow to GEMX. The elimination of the Tier 5 Non-Penny Symbol Maker

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[19] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[20] *See NetCoalition,* at 534–535.

[21] *Id.* at 537.

[22] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

Rebates and Taker Fees would result in no change as the same Tier 5 Non-Penny Symbol Maker Rebates and Taker Fees exist for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees. As noted, with the amended Tier 4 criteria a GEMX Member would continue to be able to achieve the same Non-Penny Symbol Maker Rebates and Taker Fees that are currently offered for Tier 4 Non-Penny Symbol Maker Rebates and Taker Fees. With these proposed changes, Priority Customers would continue to be paid the highest Market Rebates and be assessed the lowest Taker Fees in Penny and Non-Penny Symbols.

The Exchange's proposal to eliminate the Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees is equitable and not unfairly discriminatory. All Members that meet the qualifications of the Tier 1 through Tier 4 Qualifying Tier Thresholds would continue to be eligible, uniformly, to receive the corresponding rebates and fees.

Qualifying Tier Thresholds

The Exchange's proposal to amend the description of Tier 4 of the Qualifying Tier Thresholds, within Table 1 of Options 7, Section 3, with respect to the Total Affiliated Member % of Customer Total Consolidated Volume,[23] to require that a member execute 2.5% or greater of Customer Total Consolidated Volume is reasonable, equitable and not unfairly discriminatory. Also, the Exchange's proposal to amend the description of the Tier 4 of Qualifying Tier Threshold with respect to the Priority Customer Maker % of Customer Total Consolidated Volume,[24] to require that a member executes Priority Customer Maker volume of 1.20% or greater of Customer Total Consolidated Volume is reasonable, equitable and not unfairly discriminatory. With the elimination of Tier 5 Penny and Non-Penny Symbol Maker Rebates and Taker Fees, the Tier 4 Penny and Non-Penny Symbol Maker Rebates and Taker Fees would be the highest Maker Rebate and lowest Taker Fee. All Members that meet the qualifications of the Tier 4 Qualifying Tier Threshold would be eligible, uniformly, to receive the corresponding rebates and fees.

[23] For purposes of measuring Total Affiliated Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

[24] The Priority Customer Maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols.

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.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

Priority Customer Taker Fee

The Exchange's proposal to decrease the current Tier 1 Priority Customer Penny Symbol Taker Fee from $0.49 to $0.48 per contract does not impose an undue burden on competition. Priority Customers continue to be assessed the lowest Penny Symbol Taker Fees. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Tier 5 Maker Rebates and Taker Fees

The Exchange's proposal to eliminate Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees does not impose an undue burden on competition. Exchange's proposal to eliminate the Penny and Non-Penny Symbol Tier 5 Maker Rebates and Taker Fees is equitable and not unfairly discriminatory. All Members that meet the qualifications of the Tier 1 through Tier 4 Qualifying Tier Thresholds would continue to be eligible, uniformly, to receive the corresponding rebates and fees.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[25] and Rule 19b–4(f)(2)[26] 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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2022–01 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–GEMX–2022–01. 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

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2022–01 and should be submitted on or before February 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01325 Filed 1–24–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94006; File No. SR–NYSEArca–2021–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Disapproving a Proposed Rule Change To List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E

January 20, 2022.

I. Introduction

On May 6, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the First Trust SkyBridge Bitcoin ETF Trust (''Trust'') under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on May 27, 2021.[3]

On July 7, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On August 20, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On November 15, 2021, the Commission designated a longer period for Commission action on the proposed rule change.[8]

This order disapproves the proposed rule change. The Commission concludes that NYSE Arca has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and in particular, the requirement that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.''[9]

When considering whether NYSE Arca's proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices, the Commission applies the same standard used in its orders considering previous proposals to list bitcoin[10]-based commodity trusts and bitcoin-based trust issued receipts.[11] As the Commission has explained, an exchange that lists bitcoin-based exchange-traded products (''ETPs'') can meet its obligations under Exchange Act Section 6(b)(5) by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets.[12]

The standard requires such surveillance-sharing agreements since they ''provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it

[27] 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. 91962 (May 21, 2021), 86 FR 28646 (May 27, 2021) (''Notice''). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nysearca-2021-37/srnysearca202137.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92333, 86 FR 36826 (July 13, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 92714, 86 FR 47662 (Aug. 26, 2021).

[8] *See* Securities Exchange Act Release No. 93570, 86 FR 64975 (Nov. 19, 2021).

[9] 15 U.S.C. 78f(b)(5).

[10] Bitcoins are digital assets that are issued and transferred via a decentralized, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the ''bitcoin blockchain.'' The bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions. *See, e.g.,* Notice, 86 FR at 28646–47.

[11] *See* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (''Winklevoss Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 88284 (Feb. 26, 2020), 85 FR 12595 (Mar. 3, 2020) (SR–NYSEArca–2019–39) (''USBT Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93700 (Dec. 1, 2021), 86 FR 69322 (Dec. 7, 2021) (SR–CboeBZX–2021–024) (''WisdomTree Order''); Order Disapproving a Proposed Rule Change to List and Trade Shares of the Valkyrie Bitcoin Fund under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 93859 (Dec. 22, 2021), 86 FR74156 (Dec. 29, 2021) (SR–NYSEArca–2021–31) (''Valkyrie Order''); Order Disapproving a Proposed Rule Change to List and Trade Shares of the Kryptoin Bitcoin ETF Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93860 (Dec. 22, 2021), 86 FR 74166 (Dec. 29, 2021) (SR–CboeBZX–2021–029) (''Kryptoin Order''). *See also* Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust Under NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247 (Apr. 3, 2017) (SR–NYSEArca–2016–101) (''SolidX Order''). The Commission also notes that orders were issued by delegated authority on the following matters: Order Disapproving a Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR–NYSEArca–2017–139) (''ProShares Order''); Order Disapproving a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001) (''GraniteShares Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 FR 64539 (Nov. 18, 2021) (SR–CboeBZX–2021–019).

[12] *See* USBT Order, 85 FR at 12596. *See also* Winklevoss Order, 83 FR at 37592 n.202 and accompanying text (discussing previous Commission approvals of commodity-trust ETPs); GraniteShares Order, 83 FR at 43925–27 nn.35–39 and accompanying text (discussing previous Commission approvals of commodity-futures ETPs).

were to occur.'' [13] The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading the underlying assets for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.[14] The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.[15]

In the context of this standard, the terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[16] A surveillance-sharing agreement must be entered into with a ''significant market'' to assist in detecting and deterring manipulation of the ETP, because a person attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that ''significant market.'' [17]

Consistent with this standard, for the commodity-trust ETPs approved to date for listing and trading, there has been in *every* case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (''ISG'') membership in common with, that market.[18] Moreover, the surveillance-sharing agreements have been consistently present whenever the Commission has approved the listing and trading of derivative securities, even where the underlying securities were also listed on national securities exchanges—such as options based on an index of stocks traded on a national securities exchange—and were thus subject to the Commission's direct regulatory authority.[19]

Listing exchanges have also attempted to demonstrate that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, including that the bitcoin market as a whole or the relevant underlying bitcoin market is ''uniquely'' and ''inherently'' resistant to fraud and manipulation.[20] In response, the Commission has agreed that, if a listing exchange could establish that the underlying market inherently possesses a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets, it would not necessarily need to enter into a surveillance-sharing agreement with a regulated significant market.[21] Such resistance to fraud and manipulation, however, must be novel and beyond those protections that exist in traditional commodity markets or equity markets for which the Commission has long required surveillance-sharing agreements in the context of listing derivative securities products.[22] No listing exchange has satisfied its burden to make such demonstration.[23]

In its proposed rule change to list and trade Shares, NYSE Arca contends that approval of the proposal is consistent with Section 6(b)(5) of the Exchange Act, in particular Section 6(b)(5)'s requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[24] As discussed in more detail below, NYSE Arca asserts that the proposal is consistent with Section 6(b)(5) of the Exchange Act because the Exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size,[25] and there exist other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[26]

Moreover, although NYSE Arca recognizes the Commission's focus on potential manipulation of bitcoin ETPs in prior disapproval orders, NYSE Arca states that the Commission should also consider the direct, quantifiable investor protection issues in determining whether to approve the proposal.[27] Specifically, NYSE Arca believes that the proposal would give U.S. investors access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks associated with investing in operating companies that are imperfect proxies for

[13] *See* Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70959 (Dec. 22, 1998) (''NDSP Adopting Release''). *See also* Winklevoss Order, 83 FR at 37594; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43924; USBT Order, 85 FR at 12596.

[14] *See* NDSP Adopting Release, 63 FR at 70959.

[15] *See* Winklevoss Order, 83 FR at 37592–93; Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O'Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), *available at https://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm*.

[16] *See* Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants. *See id.*

[17] *See* USBT Order, 85 FR at 12597.

[18] *See* Winklevoss Order, 83 FR at 37594.

[19] *See* USBT Order, 85 FR at 12597; Securities Exchange Act Release No. 33555 (Jan. 31, 1994), 59 FR 5619, 5621 (Feb. 7, 1994) (SR–Amex–93–28) (order approving listing of options on American Depository Receipts (''ADRs'')). The Commission has also required a surveillance-sharing agreement in the context of index options even when (i) all of the underlying index component stocks were either registered with the Commission or exempt from registration under the Exchange Act; (ii) all of the underlying index component stocks traded in the U.S. either directly or as ADRs on a national securities exchange; and (iii) effective international ADR arbitrage alleviated concerns over the relatively smaller ADR trading volume, helped to ensure that ADR prices reflected the pricing on the home market, and helped to ensure more reliable price determinations for settlement purposes, due to the unique composition of the index and reliance on ADR prices. *See* Securities Exchange Act Release No. 26653 (Mar. 21, 1989), 54 FR 12705, 12708 (Mar. 28, 1989) (SR–Amex–87–25) (stating that ''surveillance-sharing agreements between the exchange on which the index option trades and the markets that trade the underlying securities are necessary'' and that ''[t]he exchange of surveillance data by the exchange trading a stock index option and the markets for the securities comprising the index is important to the detection and deterrence of intermarket manipulation.''). And the Commission has required a surveillance-sharing agreement even when approving options based on an index of stocks traded on a national securities exchange. *See* Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221, 28224 (June 24, 1992) (SR–Amex–91–22) (stating that surveillance-sharing agreements ''ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses'').

[20] *See* USBT Order, 85 FR at 12597.

[21] *See* Winklevoss Order, 83 FR at 37580, 37582–91 (addressing assertions that ''bitcoin and bitcoin [spot] markets'' generally, as well as one bitcoin trading platform specifically, have unique resistance to fraud and manipulation); *see also* USBT Order, 85 FR at 12597.

[22] *See* USBT Order, 85 FR at 12597.

[23] *See supra* note 11.

[24] *See* Notice, 86 FR at 28660–61.

[25] *See id.* at 28656–58.

[26] *See id.* at 28658.

[27] *See id.* at 28650.

bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.[28]

In the analysis that follows, the Commission examines whether the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act by addressing: In Section III.B.1 assertions that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices; in Section III.B.2 assertions that NYSE Arca has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin; and in Section III.C assertions that the proposal is consistent with the protection of investors and the public interest.

Based on the analysis, the Commission concludes that NYSE Arca has not established that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Commission further concludes that NYSE Arca has not established that it has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin. As discussed further below, NYSE Arca repeats various assertions made in prior bitcoin-based ETP proposals that the Commission has previously addressed and rejected—and more importantly, NYSE Arca does not respond to the Commission's reasons for rejecting those assertions but merely repeats them. As a result, the Commission does not find that the proposed rule change is consistent with the statutory requirements of Exchange Act Section 6(b)(5).

The Commission again emphasizes that its disapproval of this proposed rule change does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, NYSE Arca has not met its burden to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5).

II. Description of the Proposed Rule Change

As described in more detail in the Notice,[29] the Exchange proposes to list and trade the Shares of the Trust under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust will be for the Shares to reflect the performance of the value of bitcoin, less the Trust's liabilities and expenses.[30] The Trust will not seek to reflect the performance of any benchmark or index. In order to pursue its investment objective, the Trust will seek to purchase and sell such number of bitcoin so that the total value of the bitcoin held by the Trust is as close to 100 percent of the net assets of the Trust as is reasonably practicable to achieve.[31]

The Shares would represent units of fractional undivided beneficial interest in, and ownership of, the Trust. The Trust will hold only bitcoins, which the Bitcoin Custodian will custody on behalf of the Trust. The Trust generally will not hold cash or cash equivalents; however, the Trust may hold cash and cash equivalents on a temporary basis to pay extraordinary expenses.[32]

The net asset value (''NAV'') of the Trust will be determined in accordance with Generally Accepted Accounting Principles as the total value of bitcoin held by the Trust, plus any cash or other assets, less any liabilities including accrued but unpaid expenses. The NAV of the Trust will be determined as of 4:00 p.m. ET on each day that the Shares trade on the Exchange (''Business Day'').[33] The Trust will use the CF Bitcoin US Settlement Price (''Reference Rate'') to calculate the Trust's NAV.

The Reference Rate is administered by CF Benchmarks Ltd. (''Benchmark Administrator'') and serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m. ET[34] The Reference Rate aggregates the trade flow of several bitcoin platforms during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin at 4:00 p.m., ET The current constituent bitcoin platforms of the Reference Rate are Bitstamp, Coinbase, Gemini, itBit, and Kraken (''Constituent Platforms''). In calculating the Reference Rate, the methodology creates a joint list of all ''Relevant Transactions'' [35] from the Constituent Platforms. The methodology divides this list into a number of equally sized time intervals and calculates the volume-weighted median trade price for each of those time intervals.[36] The Reference Rate is the equally weighted average of the volume-weighted median trade prices of all intervals.[37]

The Trust's website, as well as one or more major market data vendors, will provide an intra-day indicative value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m. ET). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Core Trading Session to reflect changes in the value of the Trust's NAV during the trading day.[38]

The Trust will issue and redeem Shares to authorized participants on an ongoing basis in blocks of 50,000 Shares (''Creation Units''). The creation and redemption of Creation Units will be effected in ''in-kind'' transactions based on the quantity of bitcoin attributable to each Share. The creation and redemption of Creation Units require the delivery to the Trust, or the distribution by the Trust, of the number of bitcoins represented by the Creation Units being created or redeemed.[39]

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[28] *See id.* at 28649.

[29] *See* Notice, *supra* note 3. *See also* Registration Statement on Form S–1/A, dated May 6, 2021 (File No. 333–254529), filed with the Commission on behalf of the Trust (''Registration Statement'').

[30] *See* Notice, 86 FR at 28652. First Trust Advisors L.P. is the sponsor of the Trust, and Delaware Trust Company is the trustee. The sub-adviser for the Trust is SkyBridge Capital II, LLC (''Sub-Adviser''). The Bank of New York Mellon (''Administrator'') is the transfer agent and the administrator of the Trust. The bitcoin custodian for the Trust is NYDIG Trust Company LLC (''Bitcoin Custodian''). *See id.* at 28646.

[31] *See id.* at 28652.

[32] *See id.* at 28652, 28654. The Administrator acts as custodian of the Trust's cash and cash equivalents. *See id.* at 28654. While the Trust may from time to time incur certain extraordinary, non-recurring expenses that must be paid in U.S. dollars or other fiat currency, such events would only impact the amount of bitcoin represented by a Share of the Trust. *See id.* at 28655.

[33] The Trust's daily activities will generally not be reflected in the NAV determined for the Business Day on which the transactions are effected (the trade date), but rather on the following Business Day. *See id.* at 28654.

[34] According to NYSE Arca, the Reference Rate is based on materially the same methodology (except calculation time) as the Benchmark Administrator's CME CF Bitcoin Reference Rate (''CME CF BRR''), which was first introduced on November 14, 2016, and is the rate on which bitcoin futures contracts are cash-settled in U.S. dollars on the Chicago Mercantile Exchange (''CME''). *See id.* at 28654.

[35] According to the Exchange, a ''Relevant Transaction'' is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m., ET, on a Constituent Platform in the BTC/USD pair that is reported and disseminated by a Constituent Platform through its publicly available Automatic Programming Interface (''API'') and observed by the Benchmark Administrator. *See id.* at 28655.

[36] According to the Exchange, a volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation. *See id.* at 28655 n.64.

[37] *See id.* at 28654–55.

[38] *See id.* at 28659.

[39] *See id.* at 28658–59.

III. Discussion

A. The Applicable Standard for Review

The Commission must consider whether NYSE Arca's proposal is consistent with the Exchange Act. Section 6(b)(5) of the Exchange Act requires, in relevant part, that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [40] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [41]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[42] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[43] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[44]

B. Whether NYSE Arca has Met Its Burden To Demonstrate That the Proposal Is Designed To Prevent Fraudulent and Manipulative Acts and Practices

(1) Assertions That Other Means Besides Surveillance-Sharing Agreements Will Be Sufficient To Prevent Fraudulent and Manipulative Acts and Practices

As stated above, the Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with a comprehensive surveillance-sharing agreement with a regulated market of significant size, including by demonstrating that the bitcoin market as a whole or the relevant underlying bitcoin market is uniquely and inherently resistant to fraud and manipulation.[45] Such resistance to fraud and manipulation must be novel and beyond those protections that exist in traditional commodities or securities markets.[46]

NYSE Arca asserts that certain aspects of the market for bitcoin help to mitigate the potential for fraud and manipulation in connection with bitcoin pricing.[47] Specifically, according to NYSE Arca, the significant liquidity in the bitcoin spot market and the impact of market orders on the overall price of bitcoin have made attempts to move the price of bitcoin increasingly expensive over the past year.[48] The Exchange states that, in January 2020, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in February 2021) with a market impact of 50 basis points (compared to 30 basis points in February 2021). For a $10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in February 2021) with a market impact of 80 basis points (compared to 50 basis points in February 2021). NYSE Arca contends that, as the liquidity in the bitcoin spot market increases, it follows that the impact of $5 million and $10 million orders will continue to decrease.[49]

The Exchange's assertions about the bitcoin market do not constitute other means to prevent fraud and manipulation sufficient to justify dispensing with the requisite surveillance-sharing agreement. First, the data furnished by NYSE Arca regarding the cost to move the price of bitcoin, and the market impact of such attempts, are incomplete. NYSE Arca does not provide meaningful analysis pertaining to how these figures compare to other markets or why one must conclude, based on the numbers provided, that the bitcoin market is costly to manipulate. Further, NYSE Arca's analysis of the market impact of a mere two sample transactions is not sufficient evidence to conclude that the bitcoin market is resistant to manipulation.[50] Even assuming that the Commission agreed with NYSE Arca's premise, that it is costly to manipulate the bitcoin market, and it is becoming increasingly so, any such evidence speaks only to establish that there is some resistance to manipulation, not that it establishes *unique* resistance to manipulation to warrant dispensing with the standard surveillance-sharing agreement.[51]

Moreover, NYSE Arca does not sufficiently contest the presence of possible sources of fraud and manipulation in the bitcoin spot market generally that the Commission has raised in previous orders, which have included: (1) ''wash'' trading; (2) persons with a dominant position in bitcoin manipulating bitcoin pricing; (3) hacking of the bitcoin network and trading platforms; (4) malicious control of the bitcoin network; (5) trading based on material, non-public information (such as plans of market participants to significantly increase or decrease their holdings in bitcoin; new sources of demand for bitcoin; the decision of a bitcoin-based investment vehicle on how to respond to a ''fork'' in the bitcoin blockchain), or based on the dissemination of false and misleading information; (6) manipulative activity involving the purported ''stablecoin'' Tether (USDT); and (7) fraud and manipulation at bitcoin trading platforms.[52]

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[40] 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act. Exchange Act Section 6(b)(5) states that an exchange shall not be registered as a national securities exchange unless the Commission determines that ''[t]he rules of the exchange are 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.'' 15 U.S.C. 78f(b)(5).

[41] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[42] *See id.*

[43] *See id.*

[44] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017) (''Susquehanna'').

[45] *See* USBT Order, 85 FR at 12597 n.23. The Commission is not applying a ''cannot be manipulated'' standard. Instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *See id.*

[46] *See id.* at 12597.

[47] *See* Notice, 86 FR at 28658.

[48] *See id.*

[49] *See id.*

[50] Aside from stating that the ''statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021,'' the Exchange provides no other information pertaining to the methodology used to enable the Commission to evaluate these findings or their significance. *See* Notice, 86 FR at 28658 n.91.

[51] *See* USBT Order, 85 FR at 12601.

[52] *See* USBT Order, 85 FR at 12600–01 & nn.66–67 (discussing J. Griffin & A. Shams, *Is Bitcoin*

In addition, NYSE Arca does not address risk factors specific to the bitcoin blockchain and bitcoin platforms described in the Trust's Registration Statement that undermine its assertions about the bitcoin market. For example, the Registration Statement acknowledges that ''platforms on which users trade bitcoin are relatively new and, in some cases, largely unregulated, and, therefore, may be more exposed to fraud and security breaches than established, regulated exchanges for other financial assets or instruments;'' that the bitcoin blockchain could be vulnerable to a ''51% attack,'' in which a malicious actor(s) or botnet that controls a majority of the processing power dedicated to mining on the bitcoin network may be able to alter the bitcoin blockchain on which the bitcoin network and bitcoin transactions rely; that the nature of the assets held at bitcoin platforms makes them ''appealing targets for hackers'' and that ''a number of bitcoin platforms have been victims of cybercrimes;'' that ''in 2019 there were reports claiming that 80–95% of bitcoin trading volume on [bitcoin platforms] was false or non-economic in nature;'' and that, over the past several years, bitcoin trading platforms ''have been closed due to fraud and manipulative activity, business failure or security breaches.'' [53]

NYSE Arca also asserts that other means to prevent fraud and manipulation are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange states that the Reference Rate, which is used to determine the value of the Trust's bitcoin and NAV, is itself resistant to manipulation based on the Reference Rate's methodology.[54] The Reference Rate mitigates the effects of potential manipulation of the bitcoin market because the Reference Rate is exclusively based on Constituent Platforms.[55] According to the Exchange, the capital necessary to maintain a significant presence on any Constituent Platform would make manipulation of the Reference Rate unlikely.[56] The Exchange, moreover, asserts that ''[b]itcoin trades in a well-arbitraged and distributed market'', and ''[t]he linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin on any Constituent Platform [(and, as implied by the Exchange, the Reference Rate)] would likely require overcoming the liquidity supply of such arbitrageurs who are potentially eliminating any cross-market pricing differences.'' [57]

Simultaneously with the Exchange's assertions regarding the Reference Rate, the Exchange also states that, because the Trust will engage in in-kind creations and redemptions only, the ''manipulability of the Reference Rate [is] significantly less important.'' [58] The Exchange elaborates further that, ''because the Trust will not accept cash to buy bitcoin in order to create or redeem Shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.'' [59] According to NYSE Arca, when authorized participants create Shares with the Trust, they would need to deliver a certain number of bitcoin per Share (regardless of the valuation used), and when they redeem with the Trust, they would similarly expect to receive a certain number of bitcoin per Share.[60] As such, NYSE Arca argues that, even if the price used to value the Trust's bitcoin has been manipulated, the ratio of bitcoin per Share does not change, and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value.[61] This, according to NYSE Arca, not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Reference Rate because there is little financial incentive to do so.[62]

Based on assertions made and the information provided, the Commission can find no basis to conclude that NYSE Arca has articulated other means to prevent fraud and manipulation that are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The record does not demonstrate that the proposed methodology for calculating the Reference Rate would make the proposed ETP resistant to fraud or manipulation such that a surveillance-sharing agreement with a regulated market of significant size is unnecessary.[63]

NYSE Arca has not shown that its proposed use of a number of equally-sized time intervals over the observation window between 3:00 p.m. and 4:00 p.m., E.T., to calculate the Reference Rate would effectively be able to eliminate fraudulent or manipulative activity that is not transient. Fraud and manipulation in the bitcoin spot market could persist for a ''significant duration.'' [64] The Exchange does not connect the use of such partitions to the duration of the effects of fraud and manipulation in the bitcoin spot market.[65] Thus, the Exchange fails to establish how the Reference Rate's methodology eliminates fraudulent or manipulative activity that is not transient.[66]

Moreover, the record does not demonstrate that the Benchmark Administrator's reliance solely on the Constituent Platforms to calculate the Reference Rate make the proposed ETP resistant to fraud or manipulation. For example, even assuming, as the Exchange asserts, that the capital necessary to maintain a significant presence on any Constituent Platform make the Reference Rate resistant to manipulation, the Exchange has not assessed the possible influence that spot platforms not included among the Constituent Platforms would have on bitcoin prices used to calculate the Reference Rate. As discussed above, the Exchange has not sufficiently addressed the presence of possible sources of fraud and manipulation in the broader spot market previously raised by the Commission or by the Trust's Registration Statement.[67] Accordingly, to the extent that trading on platforms not directly used to calculate the Reference Rate affects prices on the Constituent Platforms, the characteristics of those other platforms—where various kinds of fraud and manipulation from a variety of sources may be present and persist—may affect whether the Reference Rate is resistant to manipulation.

Likewise, the Commission is unpersuaded by NYSE Arca's assertion that arbitrage across bitcoin markets makes it unlikely that the price of bitcoin on the Constituent Platforms would be manipulated. Here, the Exchange provides insufficient evidence to support its assertion of price arbitrage across bitcoin platforms and does not

Really Untethered? (October 28, 2019), *available at https://ssrn.com/abstract=3195066* and published in 75 J. Finance 1913 (2020)); Winklevoss Order, 83 FR at 37585–86; Valkyrie Order, 86 FR at 74160.

[53] *See* Registration Statement at 16, 18, 20–21.

[54] *See* Notice, 86 FR at 28658.

[55] *See id.* at 28661.

[56] *See id.*

[57] *See id.*

[58] *See id.* at 28658.

[59] *See id.*

[60] *See id.*

[61] *See id.*

[62] *See id.*

[63] The Commission has previously considered and rejected similar arguments about the valuation of bitcoin according to a benchmark or reference price. *See, e.g.,* SolidX Order, 82 FR at 16258; Winklevoss Order, 83 FR at 37587–90; USBT Order, 85 FR at 12599–601; WisdomTree Order, 86 FR at 69326–28; Valkyrie Order, 86 FR at 74160–63; Kryptoin Order, 86 FR at 74172–73.

[64] *See* USBT Order, 85 FR at 12601 n.66; *see also id.* at 12607.

[65] *See* WisdomTree Order, 86 FR at 69327.

[66] *See* USBT Order, 85 FR at 12607.

[67] *See supra* notes 52–53 and accompanying text.

take into account that a market participant with a dominant ownership position would not find it prohibitively expensive to overcome the liquidity supplied by arbitrageurs and could use dominant market share to engage in manipulation.[68]

In addition, the Exchange's assertions about the Reference Rate are contradicted by the Registration Statement, which states that ''the [Reference Rate] has a limited history and there are limitations with the price of bitcoin reflected there.'' [69] The Registration Statement further states that ''platforms on which users trade bitcoin. . . may be more exposed to fraud and security breaches than established, regulated exchanges for other financial assets or instruments, which could have a negative impact on the performance of the Trust.'' [70] The Constituent Platforms are a subset of the bitcoin platforms currently in existence. Although the Sponsor raises concerns regarding fraud and security of bitcoin platforms in the Registration Statement, which would include the Constituent Platforms, the Exchange does not explain how or why such concerns are consistent with its assertion that the use of the Reference Rate mitigates the effects of potential manipulation of the bitcoin market.

NYSE Arca also does not explain the significance of the Reference Rate's purported resistance to manipulation to the overall analysis of whether the proposal to list and trade the Shares is designed to prevent fraud and manipulation. Even assuming that the Exchange's argument is that, if the Reference Rate is resistant to manipulation, the Trust's NAV, and thereby the Shares as well, would be resistant to manipulation, the Exchange has not established in the record a basis for such conclusion. That assumption aside, the Commission notes that the Shares would trade at market-based prices in the secondary market, not at NAV, which then raises the question of the significance of the NAV calculation to the manipulation of the Shares.

The Exchange's arguments are also contradictory. While arguing that the Reference Rate is resistant to manipulation, the Exchange simultaneously downplays the importance of the Reference Rate in light of the Trust's in-kind creation and redemption mechanism.[71] The Exchange points out that the Trust will create and redeem Shares in-kind, not in cash, which renders the NAV calculation, and thereby the ability to manipulate NAV, ''significantly less important.'' [72] The Trust will not accept cash to buy bitcoin in order to create Shares or sell bitcoin to pay cash for redeemed Shares. Accordingly, in NYSE Arca's own words, the price that the Sponsor uses to value the Trust's bitcoin ''is not particularly important.'' [73] If the Reference Rate that the Trust uses to value the Trust's bitcoin ''is not particularly important,'' it follows that the Reference Rate's resistance to manipulation is not material to the Shares' susceptibility to fraud and manipulation. As the Exchange does not address or provide any analysis with respect to these issues, the Commission cannot conclude that the Reference Rate aids in the determination that the proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices.

The Commission thus concludes that the Exchange has not demonstrated that its use of the Reference Rate makes the proposed ETP resistant to manipulation. While the proposed procedures for calculating the Reference Rate using only prices from the Constituent Platforms are intended to provide some degree of protection against attempts to manipulate the Reference Rate, these procedures are not sufficient for the Commission to dispense with the requisite surveillance-sharing agreement with a regulated market of significant size.

Finally, the Commission finds that NYSE Arca has not demonstrated that in-kind creations and redemptions provide the Shares with a unique resistance to manipulation. The Commission has previously addressed similar assertions.[74] As the Commission stated before, in-kind creations and redemptions are a common feature of ETPs, and the Commission has not previously relied on the in-kind creation and redemption mechanism as a basis for excusing exchanges that list ETPs from entering into surveillance-sharing agreements with significant, regulated markets related to the portfolio's assets.[75] Accordingly, the Commission is not persuaded here that the Trust's in-kind creations and redemptions afford it a unique resistance to manipulation.

(2) Assertions That NYSE Arca Has Entered Into a Comprehensive Surveillance-Sharing Agreement With a Regulated Market of Significant Size

As NYSE Arca has not demonstrated that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, the Commission next examines whether the record supports the conclusion that NYSE Arca has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size relating to the underlying assets. In this context, the term ''market of significant size'' includes a market (or group of markets) as to which (i) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (ii) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[76]

In its proposal, NYSE Arca asserts that the CME, either alone as the sole market for bitcoin futures or as a group of markets together with the Constituent Platforms, is a ''market of significant size.'' [77] As the Commission has stated in the past, it considers two markets that are members of the ISG to have a comprehensive surveillance-sharing agreement with one another, even if they do not have a separate bilateral surveillance-sharing agreement.[78] Accordingly, based on the common membership of NYSE Arca and the CME in the ISG,[79] NYSE Arca has the equivalent of a comprehensive surveillance-sharing agreement with the CME. However, while the Commission recognizes that the Commodity Futures Trading Commission (''CFTC'') regulates the CME futures market,[80] including the

[68] *See, e.g.,* Winklevoss Order, 83 FR at 37584; USBT Order, 85 FR at 12600–01.

[69] *See* Registration Statement at 35.

[70] *See id.* at 18.

[71] *See supra* notes 58–62 and accompanying text.

[72] *See* Notice, 86 FR at 28658 (''While the Sponsor believes that the Reference Rate used to value the Trust's bitcoin is itself resistant to manipulation based on the methodology described above, the fact that creations and redemptions are only available in-kind makes the manipulability of the Reference Rate significantly less important.'').

[73] *See id.*

[74] *See* Winklevoss Order, 83 FR at 37589–90; USBT Order, 85 FR at 12607–08.

[75] *See, e.g.,* iShares COMEX Gold Trust, Securities Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Securities Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14969, 14974 (Mar. 24, 2006) (SR–Amex–2005–072).

[76] *See* Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that provides guidance to market participants. *See id.*

[77] *See* Notice, 86 FR at 28656–58, 28661.

[78] *See* Winklevoss Order, 83 FR at 37580 n.19.

[79] *See* Notice, 86 FR at 28656.

[80] While the Commission recognizes that the CFTC regulates the CME, the CFTC is not responsible for direct, comprehensive regulation of the underlying bitcoin spot market. *See* Winklevoss Order, 83 FR at 37587, 37599. *See also infra* notes 125–127 and accompanying text.

CME bitcoin futures market, and thus such market is ''regulated'' in the context of the proposed ETP, the record does not, as explained further below, establish that the CME bitcoin futures market, either alone as the sole market for bitcoin futures or as a group of markets together with the Constituent Platforms, is a ''market of significant size'' as that term is used in the context of the applicable standard here.

(a) Whether There Is a Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on the CME Bitcoin Futures Market, Alone or Together With Constituent Platforms, To Successfully Manipulate the ETP

The first prong in establishing whether the CME bitcoin futures market constitutes a ''market of significant size'' is the determination that there is a reasonable likelihood that a person attempting to manipulate the ETP would have to trade on the CME bitcoin futures market to successfully manipulate the ETP.[81]

NYSE Arca notes that the CME began to offer trading in bitcoin futures in 2017.[82] According to NYSE Arca, nearly every measurable metric related to CME bitcoin futures contracts, which trade and settle like other cash-settled commodity futures contracts, has ''trended consistently up since launch and/or accelerated upward in the past year.'' [83] For example, according to NYSE Arca, there was approximately $28 billion in trading in the CME bitcoin futures in December 2020 compared to $737 million, $1.4 billion, and $3.9 billion in total trading in December 2017, December 2018, and December 2019, respectively.[84] Additionally, CME bitcoin futures traded over $1.2 billion per day in December 2020 and represented $1.6 billion in open interest compared to $115 million in December 2019.[85] Similarly, NYSE Arca contends that the number of large open interest holders [86] has continued to increase, even as the price of bitcoin has risen, as have the number of unique accounts trading CME bitcoin futures.[87]

In addition, NYSE Arca states that there was approximately $4.321 billion in trading volume and $2.582 billion in open interest in CME bitcoin futures as of April 7, 2021, compared to $433 million in trading volume and $238 million in open interest as of February 26, 2020.[88] NYSE Arca states that the growth of the CME bitcoin futures market has coincided with similar growth in the bitcoin spot market and that the market for CME bitcoin futures is rapidly approaching the size of markets for other commodity interests.[89] NYSE Arca concludes that, as the CME bitcoin futures market continues to develop and more closely resemble other commodity futures markets, it can be reasonably expected that the relationship between the CME bitcoin futures market and the bitcoin spot market will behave similar to other future/spot market relationships, including periods where a lead-lag relationship between the CME bitcoin futures market and bitcoin spot market exists.[90]

NYSE Arca also asserts that the CME is the primary market for bitcoin futures and ''compares favorably'' with other markets that were deemed to be markets of significant size in past precedents.[91] In particular, NYSE Arca states that the bitcoin market is similar to the gold market and that the CME is similarly situated to COMEX with respect to gold ETPs.[92] Namely, the Exchange states that, when the Commission approved the listing of gold ETPs and other commodity trust ETPs, rather than requiring surveillance-sharing agreements with the relevant OTC markets, the Commission relied on the surveillance-sharing agreements between the listing exchange and the regulated markets for trading futures on the underlying commodity.[93]

In addition, NYSE Arca asserts that a would-be manipulator of bitcoin prices would be reasonably likely to do so through the CME bitcoin futures market in order to take advantage of the leverage inherent in trading futures contracts.[94] The Exchange argues that, given the tremendous growth in the spot bitcoin market since 2019, the chances of succesfully deploying a manipulative scheme are ''increased exponentially'' if a would-be manipulator can affect the CME bitcoin futures market (and thus the spot market) by posting only the minimum margin required.[95] According to the Exchange, because the CME bitcoin futures market is the ''cheapest'' route to manipulate bitcoin, it is highly likely such manipulators would attempt to do so there rather than any spot market.[96]

Further, NYSE Arca maintains that, due to the decentralized nature of the bitcoin network, bitcoin manipulators would be much more likely to attempt to manipulate a limited number of futures markets rather than attempt simultaneous executions on potentially dozens of different spot bitcoin platforms.[97] NYSE Arca states that, even if a would-be manipulator does attempt to manipulate bitcoin across platforms, such a scheme would also necessarily include some attempt to manipulate the price of bitcoin futures, including the CME.[98]

The record does not demonstrate that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP. The Exchange's assertions about the size of the CME bitcoin futures market, including the trading volume and open interest of, and number of large open interest holders and unique accounts trading in, CME bitcoin futures, and its assertion that the CME is the primary market for bitcoin futures, do not establish that the CME bitcoin futures market is of significant size. While NYSE Arca provides data showing *absolute* growth in the size of the CME bitcoin futures market, it provides no data *relative* to the concomitant growth in either the bitcoin spot markets or other bitcoin futures markets (including unregulated futures markets). Morover, even if the CME has grown in relative size, as the Commission has previously articulated, the interpretation of the term ''market of significant size'' or ''significant market'' depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.[99] NYSE Arca's recitation of data reflecting the size of the CME bitcoin futures market and its unsupported claim that the CME is the primary

[81] *See* Winklevoss Order, 83 FR at 37594.

[82] According to NYSE Arca, each contract represents five bitcoin and is based on the CME CF BRR. *See* Notice, 86 FR at 28651.

[83] *See id.*

[84] *See id.*

[85] *See id.*

[86] NYSE Arca represents that a large open interest holder in CME bitcoin futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. According to NYSE Arca, at a price of approximately $30,000 per bitcoin on December 31, 2020, more than 80 firms had outstanding positions of greater than $3.8 million in CME bitcoin futures. *See id.* at 28652 n.60.

[87] *See id.* at 28652.

[88] *See id.* at 28657.

[89] *See id.*

[90] *See id.* at 28657–58.

[91] *See id.* at 28656.

[92] *See id.* at 28656–57.

[93] *See id.* at 28657.

[94] *See id.* at 28657.

[95] *See id.* The Exchange states that, as of April 12, 2021, the initial margin required in connection with CME bitcoin futures for the April 2021 contract ranged from 42% to 38%. *See id.* at 28657 n.88.

[96] *See id.* at 28657.

[97] *See id.*

[98] *See id.*

[99] *See* USBT Order, 85 FR at 12611.

market for bitcoin futures are not sufficient to establish an interrelationship between the CME bitcoin futures market and the proposed ETP.[100]

Further, the econometric evidence in the record for this proposal also does not support the conclusion that an interrelationship exists between the CME bitcoin futures market and the bitcoin spot market such that it is reasonably likely that a person attempting to manipulate the proposed ETP would also have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP.[101] The Exchange asserts that the relationship between the CME bitcoin futures market and the bitcoin spot market ''can be reasonably expected'' to behave similarly to other future/spot market relationships, including periods where a lead-lag relationship between the CME bitcoin futures market and bitcoin spot market exists,[102] but the only data NYSE Arca presents to support its ''expectation'' is the growth in and current size of the CME bitcoin futures market. NYSE Arca's ''expectation'', without any supporting evidence or analysis, constitutes an insufficient basis for approving a proposed rule change in circumstances where, as here, the Exchange's assertion would form such an integral role in the Commission's analysis.[103]

Likewise, the Exchange's comparison of the bitcoin spot market to the gold spot market is inapposite and does not establish the CME bitcoin futures market's significance. First, the Exchange provides no data or analysis to support its assertion that the bitcoin market is similar to the gold market or that the COMEX gold futures market is similar to the CME bitcoin futures market. Further, as discussed above, for the commodity-trust ETPs approved to date for listing and trading, including where the underlying commodity is gold, there has been in *every* case at least one significant, regulated market for trading futures.[104] The Exchange's unsupported assertions that the bitcoin market is similar to the gold market or that the CME is similarly situated to COMEX with respect to futures does not establish that the CME bitcoin futures market is a significant market or that it is reasonably likely that an actor attempting to manipulate the price of the proposed ETP's assets would have to trade in the CME bitcoin futures market.

The Exchange also asserts that it is ''highly likely'' that would-be manipulators of bitcoin prices would attempt to do so in the CME bitcoin futures market because it is the ''cheapest'' route to manipulate bitcoin.[105] However, the only data the Exchange provides to support its assertion is the initial margin requirement for CME bitcoin futures as of April 12, 2021.[106] The Exchange does not provide any additional data or analysis to support its conclusions or any examples that would demonstrate that such assertions are reasonable. Furthermore, the Exchange does not provide any information on the margin requirements for bitcoin futures markets other than the CME. As stated above, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[107]

Indeed, although the Exchange implies that the ''cheapest'' route to manipulate bitcoin price is through CME bitcoin futures because of its margin requirement, other bitcoin futures platforms require even less margin than the CME. For example, the contract specifications for a bitcoin futures contract on BitMex (XBTUSD) specifies a maximum initial leverage ratio of 100-to-1,[108] meaning that the required margin for bitcoin futures on BitMex is 1% of the notional value of the open contract position versus, according to the Exchange, 38% to 42% for CME bitcoin futures.[109] Thus, applying the Exchange's logic, it would appear to be ''cheaper,'' *i.e.,* require less capital commitment, to manipulate the bitcoin price using bitcoin futures traded on BitMex or other unregulated futures platforms rather than the CME, given the lower margin requirements on such unregulated platforms. The Exchange, however, does not address the significance of other futures markets' lower margin requirements to its assertion that a person attempting to manipulate the ETP would also have to trade on the CME bitcoin futures market.

Similarly, although the Exchange asserts that, due to the decentralized nature of the bitcoin network, bitcoin manipulators would be more likely to attempt to manipulate a limited number of bitcoin futures markets rather than attempt simultaneous executions on potentially dozens of different bitcoin spot platforms, NYSE Arca provides no evidence to back up its assertions. The Exchange also claims that, even if a would-be manipulator does attempt to manipulate bitcoin across platforms, such a scheme would also necessarily include some attempts to manipulate the price of bitcoin futures, including the CME. The Exchange, however, does not explain, or provide supporting evidence to establish, why one must ''necessarily'' conclude such outcome, especially as it relates to the CME. In other words, even assuming that the Commission concurred with the Exchange's premise that a would-be manipulator would attempt to manipulate the ETP by trading on the bitcoin futures market, the Exchange does not explain why such manipulator would do so specifically on the CME.

NYSE Arca also asserts that the CME, if not alone as the sole market for bitcoin futures, then together with the Constituent Platforms, is a ''market of significant size.'' The Exchange argues that, because CME bitcoin futures are cash-settled by reference to a final settlement price based on the CME CF BRR, anyone attempting to manipulate the CME CF BRR would have to trade on the Constituent Platforms, and the resulting manipulative trading patterns would be detectable by the Benchmark Administrator and the CME because of the CME's and the Benchmark Administrator's oversight of the Constituent Platforms.[110] The Exchange, moreover, states that each Constituent Platform must: (1) Enter into a data sharing agreement with the CME; (2) cooperate with inquiries and investigations of regulators and the Benchmark Administrator; and (3) submit each of its clients to its Know-

[100] *See id.* at 12612.

[101] *See id.* at 12611. Listing exchanges have attempted to demonstrate such an ''interrelationship'' by presenting the results of various econometric ''lead-lag'' analyses. The Commission considers such analyses to be central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the CME bitcoin futures market. *See id.* at 12612.

[102] *See* Notice, 86 FR at 28657–58.

[103] *See Susquehanna,* 866 F.3d at 447.

[104] *See* Winklevoss Order, 83 FR at 37594.

[105] *See* Notice, 86 FR at 28657.

[106] *See supra* note 95.

[107] *See supra* note 44.

[108] *See https://www.bitmex.com/app/contract/XBTUSD* (last visited Dec. 1, 2021). Other unregulated platforms that trade bitcoin futures have similar margin requirements. For example, Deribit has an initial minimum margin requirement of 1% for bitcoin futures. *See https://legacy.deribit.com/pages/docs/futures* (last visited Dec. 1, 2021). Binance has an initial minimum margin requirement of 2% for trading bitcoin futures. *See https://www.binance.com/en/support/announcement/34801a0c405a4b058f9ae18a1a34cad3* (last visited Dec. 1, 2021).

[109] *See* Notice, 86 FR at 28657 n.88.

[110] *See* Notice, 86 FR at 28657. The Exchange states that because the CME CF BRR is based solely on price data from the Constituent Platforms, manipulating the CME CF BRR must necessarily entail manipulating the price data at one or more Constituent Platforms. The Exchange also states that the CME CF BRR calculation agent receives trading data from the Constituent Platforms through its API. *See id.* at 28657 nn.85–86.

Your Customer (''KYC'') procedures.[111] As a result, in the case of any suspicious trades, the CME and the Exchange would be able to discover all material trade information, including the identities of the customers placing the trades.[112]

The Commission is not persuaded by the Exchange's arguments. The Exchange does not explain the significance of its assertions, including its assertion that the CME and the Benchmark Administrator would be able to detect manipulative trading patterns on the Constituent Platforms, in the overall analysis of whether there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the ETP.[113] In other words, even assuming that the Commission concurs with NYSE Arca's assertion that the CME and the Benchmark Administrator can detect manipulation on the Constituent Platforms because CME bitcoin futures are cash-settled by reference to the CME CF BRR, the Exchange does not establish how this aids in the determination that either the CME bitcoin futures market, alone or together with the Constituent Platforms, is a significant market with respect to bitcoin. Moreover, the Exchange provides nothing to support its assertion that, to manipulate the CME CF BRR, the would-be manipulator would have to trade on the Constituent Platforms. Similar to the discussion above with respect to Constituent Platforms and the Reference Rate, the Exchange has not assessed the possible influence that spot platforms not included among the Constituent Platforms would have on the spot price of bitcoin on the Constituent Platforms and bitcoin prices used to calculate the CME CF BRR. To the extent that trading on platforms not directly used to calculate the CME CF BRR affects prices on the Constituent Platforms, transactions on those other platforms could affect the CME CF BRR.

Furthermore, even assuming that the record does establish that the CME, together with the Constituent Platforms, is a market of significant size, NYSE Arca acknowledges that it has not entered into a surveillance-sharing agreement with any of the Constituent Platforms.[114] As the Commission has previously stated, a surveillance-sharing agreement with a regulated, significant market facilitates the ETP listing exchange's ability to obtain the necessary information to detect and deter manipulative misconduct.[115] Although NYSE Arca states that the Constituent Platforms must enter into a data sharing agreement with the CME, and the CME and NYSE Arca, by virtue of their ISG membership, have a comprehensive surveillance-sharing agreement with one another, NYSE Arca does not have a surveillance sharing agreement with any of the Constituent Platforms.[116] Accordingly, the Exchange fails to provide a basis for the Commission to conclude that it has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size relating to the underlying assets.[117]

The Constituent Platforms, moreover, are not ''regulated.'' The level of regulation of the Constituent Platforms is not equivalent to the obligations, authority, and oversight of national securities exchanges or futures exchanges and therefore is not an appropriate substitute.[118] National securities exchanges are required to have rules that are ''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.'' [119] Moreover, national securities exchanges must file proposed rules with the Commission regarding certain material aspects of their operations,[120] and the Commission has the authority to disapprove any such rule that is not consistent with the requirements of the Exchange Act.[121] Thus, national securities exchanges are subject to Commission oversight of, among other things, their governance, membership qualifications, trading rules, disciplinary procedures, recordkeeping, and fees.[122]

The Constituent Platforms, on the other hand, have none of these requirements (none are registered as a national securities exchange).[123] While the Exchange asserts that the Constituent Platforms must submit their clients to KYC procedures, such requirements are fundamentally different from the Exchange Act's requirements for national securities exchanges.[124] In addition, although the Commission recognizes that the CFTC maintains some jurisdiction over the bitcoin spot market, under the Commodity Exchange Act, the CFTC does not have regulatory authority over bitcoin spot trading platforms, including the Constituent Platforms.[125] Except in certain limited circumstances, bitcoin spot trading platforms are not required to register with the CFTC, and the CFTC does not set standards for, approve the rules of, examine, or otherwise regulate bitcoin spot markets.[126] As the CFTC itself stated, while the CFTC ''has an important role to play,'' U.S. law ''does not provide for direct, comprehensive Federal oversight of underlying Bitcoin or virtual currency spot markets.'' [127]

And while NYSE Arca asserts that the Constituent Platforms must enter into data sharing agreements with the CME, it does not provide any information on the scope, terms, or enforcement authority for such data sharing

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[111] *See id.* at 28657.

[112] *See id.*

[113] As further discussed below, the Commission finds that the level of regulation of the Constituent Platforms, including the oversight by the CME and the Benchmark Administrator, is not equivalent to the obligations, authority, and oversight of national securities exchanges or futures exchanges and therefore is not an appropriate substitute. *See infra* notes 118–132 and accompanying text.

[114] *See* Notice, 86 FR at 28656 n.72.

[115] *See* Winklevoss Order, 83 FR at 37549.

[116] *See* Notice, 86 FR at 28657.

[117] *See, e.g.,* USBT Order, 85 FR at 12614–15.

[118] *See id.,* 85 FR at 12603–05.

[119] *See* 15 U.S.C. 78f(b)(5).

[120] 17 CFR 240.19b–4(a)(6)(i).

[121] Section 6 of the Exchange Act, 15 U.S.C. 78f, requires national securities exchanges to register with the Commission and requires an exchange's registration to be approved by the Commission, and Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), requires national securities exchanges to file proposed rules changes with the Commission and provides the Commission with the authority to disapprove proposed rule changes that are not consistent with the Exchange Act. Designated contract markets (''DCMs'') (commonly called ''futures markets'') registered with and regulated by the CFTC must comply with, among other things, a similarly comprehensive range of regulatory principles and must file rule changes with the CFTC. *See, e.g.,* Designated Contract Markets (DCMs), CFTC, *available at http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm.*

[122] *See* Winklevoss Order, 83 FR at 37597.

[123] *See* 15 U.S.C. 78e, 78f.

[124] *See* USBT Order, 85 FR at 12603. The Commission has previously concluded that such KYC policies and procedures do not serve as a substitute for, and are not otherwise dispositive in the analysis regarding the importance of having a surveillance sharing agreement with a regulated market of significant size relating to bitcoin. For example, KYC policies and procedures do not substitute for the sharing of information about market trading activity or clearing activity and do not substitute for regulation of a national securities exchange. *See* USBT Order, 85 FR at 12603 n.101.

[125] *See* USBT Order, 85 FR at 12604.

[126] *See id.*

[127] *See* Winklevoss Order, 83 FR at 37599 n.288 (quoting CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets (Jan. 4, 2018), at 1, available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/backgrounder_virtualcurrency01.pdf*).

agreements. Nor has NYSE Arca put any information in the record as to whether and how it would use or enforce such agreements. Moreover, such agreements are contractual in nature and do not satisfy the regulatory requirements or purposes of national securities exchanges and the Exchange Act. The CME (and the CFTC, as discussed above) does not have regulatory authority over the spot bitcoin trading platforms,[128] and, while the CME is regulated by the CFTC,[129] the CFTC's regulations do not extend to the Constituent Platforms by virtue of such contractual agreements.

Further, although NYSE Arca states that the Constituent Platforms must cooperate with inquiries and investigations of regulators and the Benchmark Administrator, it does not describe the scope of such requirements or what authority the Benchmark Administrator or regulators would have to compel the platforms' cooperation or provide meaningful supporting evidence of the extent of such cooperation. Moreover, the Benchmark Administrator does not itself exercise governmental regulatory authority. Rather, the Benchmark Administrator is a registered, privately-held company in England.[130] The Benchmark Administrator's relationship with the Constituent Platforms is based on their participation in the determination of reference rates, such as the Reference Rate. While the Benchmark Administrator is regulated by the UK FCA as a benchmark administrator, the UK FCA's regulations do not extend to the Constituent Platforms by virtue of their trade prices serving as input data underlying the Reference Rate.[131]

Further, the oversight performed by the Benchmark Administrator serves a fundamentally different purpose as compared to the regulation of national securities exchanges and the requirements of the Exchange Act. While the Commission recognizes that the Benchmark Administrator's oversight functions may be important for ensuring the integrity of the Reference Rate, such requirements do not imbue either the Benchmark Administrator or the Constituent Platforms with regulatory authority similar to that the Exchange Act confers upon self-regulatory organizations such as national securities exchanges.[132]

The Commission accordingly concludes that the information provided in the record does not establish a reasonable likelihood that a would-be manipulator of the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP. Moreover, NYSE Arca has not entered into a surveillance-sharing agreement with the Constituent Platforms, and the Constituent Platforms are not ''regulated'' markets. Accordingly, the information in the record also does not establish that the CME bitcoin futures market, alone or together with the Constituent Platforms, is a ''market of significant size'' with respect to the proposed ETP or that NYSE Arca has a surveillance-sharing agreement with such a market.

(b) Whether It Is Unlikely That Trading in the Proposed ETP Would be the Predominant Influence on Prices in the CME Bitcoin Futures Market or Constituent Platforms

The second prong in establishing whether a market (or group of markets) constitutes a ''market of significant size'' is the determination that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in that market.[133] As discussed above, NYSE Arca asserts that CME, either alone as the sole market for bitcoin futures or as a group of markets together with the Constituent Platforms, satisfies this prong.[134]

First, NYSE Arca asserts that trading in the Shares would not be the predominant force on prices in the CME bitcoin futures market (or spot market) because of the significant volume in the CME bitcoin futures market, the size of bitcoin's market capitalization, which is approximately $1 trillion, and the significant liquidity available in the spot market.[135]

To support its assertion about the growth of the CME bitcoin futures market, NYSE Arca states that there was approximately $4.321 billion in trading volume and $2.582 billion in open interest in CME bitcoin futures as of April 7, 2021, compared to $433 million in trading volume and $238 million in open interest as of February 26, 2020.[136] Based on these figures, NYSE Arca concludes that, as the CME bitcoin futures market continues to develop, it can be reasonably expected that the relationship between the bitcoin futures market and bitcoin spot market will behave similarly to other future/spot market relationships, including periods where a lead-lag relationship between the bitcoin futures market and bitcoin spot market exists.

NYSE Arca also provides that, according to February 2021 data, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[137] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, NYSE Arca states that a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5 percent.[138] NYSE Arca further asserts that more strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market, which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.[139] Thus, NYSE Arca concludes that the combination of CME bitcoin futures' important role in price discovery, the overall size of the bitcoin market, and the ability for market participants (including authorized participants creating and redeeming in-kind with the Trust) to buy or sell large amounts of bitcoin without significant market impact, will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or the CME bitcoin futures market.[140]

NYSE Arca also provides the results from a study conducted by the Benchmark Administrator (''CF

[128] *See supra* notes 125–127 and accompanying text.

[129] *See supra* note 80 and accompanying text.

[130] *See https://blog.cfbenchmarks.com/legal/* (stating that the Benchmark Administrator is authorized and regulated by the UK Financial Conduct Authority (''UK FCA'') as a registered Benchmark Administrator (FRN 847100) under the EU benchmark regulation, and further noting that the Benchmark Administrator is a member of the Crypto Facilities group of companies which is in turn a member of the Payward, Inc. group of companies, and Payward, Inc. is the owner and operator of the Kraken Exchange, a venue that facilitates the trading of cryptocurrencies). The Commission notes that the Kraken is one of the Constituent Platforms underlying the Reference Rate.

[131] *See* USBT Order, 85 FR at 12604. The Benchmark Administrator is also not required to apply certain provisions of EU benchmark regulation to the Constituent Platforms because the Reference Rate's input data is not ''contributed.'' *See* Benchmark Statement, at 5 *available at https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Benchmark+Statement.pdf.*

[132] *See* 15 U.S.C. 78f(b).

[133] *See* Winklevoss Order, 83 FR at 37594; USBT Order, 85 FR at 12596–97.

[134] *See* Notice, 86 FR at 28656.

[135] *See id.* at 28657.

[136] *See id.* at 28657.

[137] *See id.* at 28658. According to NYSE Arca, these statistics are based on samples of bitcoin liquidity in U.S. dollars (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021. *See id.* at 28658 n.89.

[138] *See id.* at 28658.

[139] *See id.*

[140] *See id.*

Benchmarks Analysis'') to determine the extent of ''slippage'' (*i.e.,* the difference between the expected price of a trade and the price at which the trade was actually executed), which the Exchange states offers further evidence that trading in the Shares is unlikely to be the predominant influence in the bitcoin spot market.[141] According to NYSE Arca, the CF Benchmarks Analysis simulated the purchase of 50 bitcoins a day for 686 days (an amount chosen specifically to replicate hypothetical trades by an ETP) and found that the maximum amount of slippage on a particular day was 0.3%, with the remainder of values between 0% and 0.15%.[142] According to NYSE Arca, the CF Benchmarks Analysis demonstrates that the slippage in the study could be described as having been largely negligible or, at most, minor during the observation period.[143]

The record does not demonstrate that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market or the spot market, including the Constituent Platforms.[144] As the Commission has already addressed and rejected one of the bases of NYSE Arca's assertion—CME bitcoin futures' role in price discovery [145]—it will only address below the other bases—the overall size of, and the impact of buys and sells on, the bitcoin market and slippage.

NYSE Arca's assertions about the potential effect of trading in the Shares on the CME bitcoin futures market and bitcoin spot market are general and conclusory, repeating the aforementioned trade volume of the CME bitcoin futures market, and providing general statements about the size and liquidity of the bitcoin spot market as well as the market impact of a large transaction in the spot market, without any analysis or evidence to support these assertions. For example, there is no limit on the amount of mined bitcoin that the Trust may hold. Yet NYSE Arca does not provide any information on the expected growth in the size of the Trust and the resultant increase in the amount of bitcoin held by the Trust over time, or on the overall expected number, size, and frequency of creations and redemptions—or how any of the foregoing could (if at all) influence prices in the CME bitcoin futures market or the spot market.

Moreover, in the Trust's Registration Statement, the Sponsor acknowledges that there is no limit on the number of bitcoins that the Trust may acquire and that the Trust itself may have an impact on the supply and demand of bitcoins. Specifically, the Registration Statement states that the if the number of bitcoins acquired by the Trust is large enough relative to global bitcoin supply and demand, further creations and redemptions of Shares could have an impact on the supply of and demand for bitcoins and that such an impact could affect the price of bitcoin in U.S. dollars.[146] Although the Trust's Registration Statement concedes that the Trust could impact the price of bitcoin, NYSE Arca does not address this in the proposal or discuss how impacting the price of bitcoin can be consistent with the assertion that the Shares are unlikely to be the predominant influence on the prices of the CME bitcoin futures market or the spot market. Thus, the Commission cannot conclude, based on NYSE Arca's statements alone and absent any evidence or analysis in support of NYSE Arca's assertions, that it is unlikely that trading in the ETP would be the predominant influence on prices in the CME bitcoin futures market or the spot market.

The Commission also is not persuaded by NYSE Arca's assertions about the minimal effect a large market order to buy or sell bitcoin would have on the bitcoin market.[147] While NYSE Arca concludes by way of a $10 million market order example that buying or selling large amounts of bitcoin would have insignificant market impact, the conclusion does not analyze the extent of any impact on the CME bitcoin futures market, the market that the Exchange, in the proposal, argues is the significant market under consideration. Even assuming, however, that NYSE Arca is suggesting that a single $10 million order in bitcoin would have immaterial impact on the prices in the CME bitcoin futures market, this prong of the ''market of significant size'' determination concerns the influence on prices from trading *in* the proposed ETP, which is broader than just trading *by* the proposed ETP. While authorized participants of the Trust might only transact in the bitcoin spot market as part of their creation or redemption of Shares, the Shares themselves would be traded in the secondary market on NYSE Arca. The record does not discuss the expected number or trading volume of the Shares, or establish the potential effect of the Shares' trade prices on CME bitcoin futures prices, or the spot market prices. For example, NYSE Arca does not provide any data or analysis about the potential effect the quotations or trade prices of the Shares might have on market-maker quotations in CME bitcoin futures contracts and whether those effects would constitute a predominant influence on the prices of those futures contracts.

Similarly, although NYSE Arca cites to the CF Benchmark Analysis as evidence that trading in the Shares is unlikely to be the predominant influence in the bitcoin spot market, NYSE Arca states that the simulation in the analysis was done specifically to replicate hypothetical trades *by* an ETP. The study further states that the simulation was performed to ''represent a large [b]itcoin trade of the kind that institutional traders might need to undertake for a major client, or that an issuer of a financial product (such as an ETF or a derivative) would be required to execute in order to facilitate trading of that product.'' [148] As discussed above, this prong concerns the influence on prices from trading *in* the proposed ETP. Under the proposal, the Shares themselves would be traded in the secondary market on NYSE Arca, and the CF Benchmark Analysis does not discuss the effect of the trade prices of ETP shares or other bitcoin derivatives on the bitcoin market, or more importantly, CME bitcoin futures market. Likewise, the CF Benchmark Analysis only analyzes the prices of hypothetical bitcoin spot transactions as compared to the CME CF BRR—a spot price index—and does not analyze the

[141] *See id.* at 28658 & n.90 (citing CF Benchmarks, ''An Analysis of the Suitability of the CME CF BRR for the Creation of Regulated Financial Products,'' December 2020 (''CF Benchmarks Analysis''), available at: *https://docsend.com/view/kizk7rarzaba6jxf*).

[142] *See id.* at 28658.

[143] *See id.*

[144] *See* USBT Order, 85 FR at 12613–14. The Exchange asserts that the CME, either alone as the sole market for the bitcoin futures or as a group of markets together with the Constituent Platforms, is a ''market of significant size.'' As noted above, the second prong in establishing whether a market (or group of markets) constitutes a ''market of significant size'' is the determination that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in that market. The Exchange states throughout its filing that trading in the Shares would not be the predominant influence on prices in the CME bitcoin futures market *or spot market* rather than the Constituent Platforms. *See supra* notes 135, 140, and 141 and accompanying text. Since the Constituent Platforms are a subset of the the bitcoin spot platforms currently in existence, the Commission's analysis with respect to the spot market applies equally to the Constituent Platforms.

[145] *See supra* notes 102–103 and accompanying text.

[146] *See* Registration Statement at 21.

[147] *See* Notice, 86 FR at 28659 (''For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%.'').

[148] *See* CF Benchmark Analysis, at 16.

extent of any impact of such hypothetical transactions on prices in the CME bitcoin futures market specifically.

Thus, because NYSE Arca has not provided sufficient information to establish both prongs of the ''market of significant size'' determination, the Commission cannot conclude that the CME bitcoin futures market, either alone as the sole market for bitcoin futures or as a group of markets together with the Constituent Platforms, is a ''market of significant size'' such that NYSE Arca would be able to rely on a surveillance-sharing agreement with the CME to provide sufficient protection against fraudulent and manipulative acts and practices.

The requirements of Section 6(b)(5) of the Exchange Act apply to the rules of national securities exchanges. Accordingly, the relevant obligation for a comprehensive surveillance-sharing agreement with a regulated market of significant size, or other means to prevent fraudulent and manipulative acts and practices that are sufficient to justify dispensing with the requisite surveillance-sharing agreement, resides with the listing exchange. Because there is insufficient evidence in the record demonstrating that NYSE Arca has satisfied this obligation, the Commission cannot approve the proposed ETP for listing and trading on NYSE Arca.

C. Whether NYSE Arca Has Met Its Burden To Demonstrate That the Proposal Is Designed To Protect Investors and the Public Interest

NYSE Arca contends that, if approved, the proposed ETP would protect investors and the public interest. However, the Commission must consider these potential benefits in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.[149] Because NYSE Arca has not demonstrated that its proposed rule change is designed to prevent fraudulent and manipulative acts and practices, the Commission must disapprove the proposal.

NYSE Arca asserts that, with the growth of U.S. investor exposure to bitcoin through OTC bitcoin funds, so too has grown the potential risk to U.S. investors.[150] Specifically, NYSE Arca argues that premium and discount volatility, high fees, insufficient disclosures, and technical hurdles are exposing U.S. investors to risks that could potentially be eliminated through access to a bitcoin ETP.[151] As such, the Exchange believes that approving this proposal (and comparable proposals) represents an opportunity for U.S. investors to gain exposure to bitcoin in a regulated and transparent exchange-traded vehicle that limits risks by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) providing an alternative to custodying spot bitcoin; and (iv) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure.[152]

According to NYSE Arca, OTC bitcoin funds are generally designed to provide exposure to bitcoin in a manner similar to the Shares. However, unlike the Shares, NYSE Arca states that ''OTC [b]itcoin [f]unds are unable to freely offer creation and redemption in a way that incentivizes market participants to keep their shares trading in line with their NAV and, as a result, shares of OTC [b]itcoin [f]unds frequently trade at a price that is out-of-line with the value of their assets held.'' [153] NYSE Arca represents that, historically, OTC bitcoin funds have traded at a significant premium to NAV.[154] Although the Exchange concedes that trading at a premium or a discount is not unique to OTC bitcoin funds and not inherently problematic, NYSE Arca believes that it raises certain investor protections issues. First, according to NYSE Arca, investors are buying shares of a fund for a price that is not reflective of the per share value of the fund's underlying assets.[155] Second, according to NYSE Arca, because only accredited investors, generally, are able to purchase shares directly from the issuing fund at NAV (in exchange for either cash or bitcoin) without having to pay the premium or sell into the discount, these investors that are allowed to purchase directly with the fund are able to hedge their bitcoin exposure as needed to satisfy holding requirements and collect on the premium or discount opportunity.[156] NYSE Arca argues, therefore, that the premium in OTC bitcoin funds essentially creates a transfer in value from retail investors to more sophisticated investors.[157] NYSE Arca further asserts that the risk of manipulation of a bitcoin ETP is also present in and potentially magnified by OTC bitcoin funds.[158]

NYSE Arca also asserts that exposure to bitcoin through an ETP presents advantages for retail investors compared to buying spot bitcoin directly.[159] NYSE Arca asserts that, without the advantages of an ETP, an individual retail investor holding bitcoin through a cryptocurrency trading platform lacks protections.[160] NYSE Arca explains that, typically, retail platforms hold most, if not all, retail investors' bitcoin in ''hot'' (internet-connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard.[161] Meanwhile, a retail investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (*e.g.,* insufficient password protection, lost key, etc.), which could cause them to lose some or all of their bitcoin holdings.[162] NYSE Arca represents that the Bitcoin Custodian would, by contrast, use ''cold'' (offline) storage to hold private keys, meet a certain degree of cybersecurity measures and operational best practices, be highly experienced in bitcoin custody, and be accountable for failures.[163] In addition, NYSE Arca explains that retail investors would be able to hold the Shares in traditional brokerage accounts, which provide SIPC protection if a brokerage firm fails.[164] Thus, with respect to custody of the Trust's bitcoin assets, NYSE Arca concludes that, compared to

[149] *See* Winklevoss Order, 83 FR at 37601. *See also* GraniteShares Order, 83 FR at 43931; ProShares Order, 83 FR at 43941; USBT Order, 85 FR at 12615.

[150] *See* Notice, 86 FR at 28649.

[151] *See id.* NYSE Arca states that while it understands the Commission's previous focus on potential manipulation of a bitcoin ETP in prior disapproval orders, it believes that ''such concerns have been sufficiently mitigated and may be outweighed by the growing and quantifiable investor protection concerns related to OTC [b]itcoin [f]unds.'' *See id.*

[152] *See id.*

[153] *See id.* NYSE Arca also states that, unlike the Shares, because OTC bitcoin funds are not listed on an exchange, they are not subject to the same transparency and regulatory oversight by a listing exchange. NYSE Arca further asserts that the existence of a surveillance-sharing agreement between NYSE Arca and the CME bitcoin futures market would result in increased investor protections for the Shares compared to OTC bitcoin funds. *See id.* at 28649 n.44.

[154] *See id.* at 28649. NYSE Arca further represents that the inability to trade in line with NAV may at some point result in OTC bitcoin funds trading at a discount to their NAV, which has occurred more recently with respect to one prominent OTC bitcoin fund. According to NYSE Arca, while that has not historically been the case, and it is not clear whether such discounts will continue, such a prolonged, significant discount scenario would give rise to nearly identical potential issues related to trading at a premium. *See id.* at 28649 n.45.

[155] *See id.* at 28650.

[156] *See id.*

[157] *See id.*

[158] *See id.*

[159] *See id.*

[160] *See id.*

[161] *See id.*

[162] *See id.*

[163] *See id.* at 28650–51. NYSE Arca represents that the Sub-Adviser has previously conducted substantial due diligence on the capabilities of the Bitcoin Custodian. *See id.* at 28651 n.54.

[164] *See id.* at 28651.

owning spot bitcoin directly, the Trust presents advantages from an investment protection standpoint for retail investors.[165]

NYSE Arca further asserts that a number of operating companies engaged in unrelated businesses have recently announced investments as large as $1.5 billion in bitcoin.[166] Without access to bitcoin ETPs, NYSE Arca argues that retail investors seeking investment exposure to bitcoin may purchase shares in these companies in order to gain the exposure to bitcoin that they seek.[167] NYSE Arca contends that such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with additional risks associated with whichever operating company they decide to purchase.[168] NYSE Arca concludes that investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin, without the full benefit of the risk disclosures and associated investor protections that come from the securities registration process.[169]

NYSE Arca also states that investors in many other countries, including Canada, are able to use more traditional exchange listed and traded products to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with riskier, more expensive, and less regulated means of getting bitcoin exposure.[170] NYSE Arca anticipates that with the addition of more bitcoin ETPs in non-U.S. jurisdictions expected to grow, such risks will only continue to grow.[171]

NYSE Arca further asserts that several funds registered under the Investment Company Act of 1940 (''1940 Act'') have effective registration statements that contemplate bitcoin exposure through a variety of means, including through investments in bitcoin futures contacts and through OTC bitcoin funds and that it is anticipated that other 1940 Act funds will begin to pursue bitcoin through other means.[172] NYSE Arca asserts that these funds that have already invested in bitcoin instruments have no reported issues regarding custody, valuation, or manipulation of the instruments held by these funds.[173] NYSE Arca argues that, while these funds offer investors some means of exposure to bitcoin, the current offerings fall short of giving investors an accessible, regulated product that provides concentrated exposure to bitcoin.[174]

In essence, NYSE Arca asserts that the risky nature of a direct investment in the underlying bitcoin and the unregulated markets on which bitcoin and OTC bitcoin funds trade compel approval of the proposed rule change. In addition, NYSE Arca essentially argues that, unlike other regulated products available, the Shares would offer more concentrated exposure to bitcoin and should therefore be approved.

The Commission disagrees. Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices—and it must disapprove the filing if it does not make such a finding.[175] Thus, even if a proposed rule change purports to protect investors from a particular type of investment risk, such as the susceptibility of an asset to loss or theft, or to provide more efficient exposure to an asset class than another product, the proposed rule change may still fail to meet the requirements under the Exchange Act.[176]

Here, even if it were true that, compared to trading in unregulated bitcoin spot markets or OTC bitcoin funds, trading a bitcoin-based ETP on a national securities exchange provides some additional protection to investors, or that the Shares would provide more concentrated exposure to bitcoin than other products on the market, the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.[177] As explained above, for bitcoin-based ETPs, the Commission has consistently required that the listing exchange have a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin, or demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The listing exchange has not met that requirement here. Therefore the Commission is unable to find that the proposed rule change is consistent with the statutory standard.

Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.[178]

For the reasons discussed above, NYSE Arca has not met its burden of demonstrating that the proposal is consistent with Exchange Act Section 6(b)(5),[179] and, accordingly, the Commission must disapprove the proposal.[180]

D. Other Comments

The Commission received a comment letter that addressed the general nature and value of bitcoin.[181] Ultimately, however, additional discussion of this topic is unnecessary, as it does not bear

[165] *See id.*

[166] *See id.*

[167] *See id.*

[168] *See id.*

[169] *See id.*

[170] *See* Notice, 86 FR at 28649. NYSE Arca represents that the Purpose Bitcoin ETF, a retail bitcoin-based ETP launched in Canada, reportedly reached $421.8 million in assets under management in two days and has achieved $993 million in assets as of April 14, 2021, demonstrating the demand for a North American market listed bitcoin ETP. NYSE Arca contends that the demand for the Purpose Bitcoin ETF is driven primarily by investors' desire to have a regulated and accessible means of exposure to bitcoin. NYSE Arca further represents that the Purpose Bitcoin ETF offers a class of units that is U.S. dollar denominated, which could appeal to U.S. investors. NYSE Arca argues that without an approved bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase these shares in order to get access to bitcoin exposure. NYSE Arca believes that, given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange-listed ETP. *See id.*

[171] *See id.*

[172] *See id.*

[173] *See id.*

[174] *See id.*

[175] *See* Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

[176] *See* SolidX Order, 82 FR at 16259; WisdomTree Order, 86 FR at 69334.

[177] *See supra* note 149. The Commission notes that the proposed rule change does not relate to a product regulated under the 1940 Act. The Commission considers the proposed rule change on its own merits and under the standards applicable to it. Namely, with respect to this proposed rule change, the Commission must apply the standards as provided by Section 6(b)(5) of the Exchange Act, which it has applied in connection with its orders considering previous proposals to list bitcoin-based commodity trusts and bitcoin-based trust issued receipts.

[178] *See* 15 U.S.C. 78s(b)(2)(C).

[179] 15 U.S.C. 78f(b)(5).

[180] In disapproving the proposed rule change the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[181] *See* letter from Sam Ahn, dated June 4, 2021.

on the basis for the Commission's decision to disapprove the proposal.

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–NYSEArca–2021–37 be, and hereby is, disapproved.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01384 Filed 1–24–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17312 and #17313; ALASKA Disaster Number AK–00048]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4638–DR), dated 01/15/2022.

Incident: Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 10/29/2021 through 11/01/2021.

DATES: Issued on 01/15/2022.

Physical Loan Application Deadline Date: 03/16/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 10/17/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/15/2022, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: Kenai Peninsula Borough.

The Interest Rates are:

	Percent
For Physical Damage:.	
Non-Profit Organizations With Credit Available Elsewhere ...	1.875
Non-Profit Organizations Without Credit Available Elsewhere	1.875
For Economic Injury:.	
Non-Profit Organizations Without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17312 9 and for economic injury is 17313 0.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara E. Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–01341 Filed 1–24–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17310 and #17311; TENNESSEE Disaster Number TN–00132]

Presidential Declaration of a Major Disaster for the State of Tennessee

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4637–DR), dated 01/14/2022.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 12/10/2021 through 12/11/2021.

DATES: Issued on 01/14/2022.

Physical Loan Application Deadline Date: 03/15/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 10/14/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/14/2022, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Cheatham, Davidson, Dickson, Gibson, Henderson, Henry, Lake, Obion, Stewart, Sumner, Weakley, Wilson.

Contiguous Counties (Economic Injury Loans Only):

Tennessee: Benton, Cannon, Carroll, Chester, Crockett, Decatur, Dekalb, Dyer, Hardin, Hickman, Houston, Humphreys, Macon, Madison, Montgomery, Robertson, Rutherford, Smith, Trousdale, Williamson.

Kentucky: Allen, Calloway, Christian, Fulton, Graves, Hickman, Simpson, Trigg.

Missouri: New Madrid, Pemiscot.

The Interest Rates are:

	Percent
For Physical Damage:.	
Homeowners With Credit Available Elsewhere	2.875
Homeowners Without Credit Available Elsewhere	1.438
Businesses With Credit Available Elsewhere	5.660
Businesses Without Credit Available Elsewhere	2.830
Non-Profit Organizations With Credit Available Elsewhere ...	1.875
Non-Profit Organizations Without Credit Available Elsewhere	1.875
For Economic Injury:.	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	2.830
Non-Profit Organizations Without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17310 C and for economic injury is 17311 0.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara E. Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–01340 Filed 1–24–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17299 and #17300; Colorado Disaster Number CO–00136]

Presidential Declaration Amendment of a Major Disaster for the State of Colorado

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Colorado (FEMA–4634–DR), dated 12/31/2021.

Incident: Wildfires and Straight-line Winds.

Incident Period: 12/30/2021 through 01/07/2022.

DATES: Issued on 01/13/2022.

Physical Loan Application Deadline Date: 03/01/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 09/30/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Colorado, dated 12/31/2021, is hereby amended to establish the incident period for this disaster as beginning 12/30/2021 through 01/07/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara E. Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–01342 Filed 1–24–22; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11631]

Privacy Act of 1974; System of Records

ACTION: Notice of a modified system of records.

SUMMARY: The information collected and maintained in Integrated Logistics Management Records is necessary to: (1) Ensure fiscal accountability in issuing federal assistance, (2) coordinate the logistics of transporting the household effects of Department of State and other Embassy employees, and contracting services, (3) allow customers to submit and track requests for services, (4) allow service providers to fulfill and track customer requests, and (5) fulfill International Cooperative Administrative Support Services (ICASS).

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records notice is effective upon publication, with the exception of the routine uses that are subject to a 30 day period during which interested persons may submit comments to the Department. Please submit any comments by March 1st 2022.

ADDRESSES: Questions can be submitted by mail, email, or by calling Eric F. Stein, the Senior Agency Official for Privacy on (202) 485–2051. If mail, please write to: U.S. Department of State; Office of Global Information Systems, A/GIS; Room 1417, 2201 C St. NW; Washington, DC 20520. If email, please address the email to the Senior Agency Official for Privacy, Eric F. Stein, at *Privacy@state.gov.* Please write ''Integrated Logistics Management Records, State-70'' on the envelope or the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Eric F. Stein, Senior Agency Official for Privacy; U.S. Department of State; Office of Global Information Services, A/GIS; Room 1417, 2201 C St. NW; Washington, DC 20520 or by calling on (202) 485–2051.

SUPPLEMENTARY INFORMATION: The purpose of this modification is to make substantive and administrative changes to the previously published notice. This notice modifies the following sections: Summary, Dates, Addresses, For Further Information Contact, Supplementary Information, System Name and Number, System Location(s), Categories of Individuals Covered by the System, Categories of Records in the System, 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 Administrative, Technical, and Physical Safeguards. In addition, this notice makes administrative updates to the following sections: Policies and Procedures for Retrieval of Records, Record Access Procedures, Notification Procedures, and History. This notice is being modified to reflect the Department's move to the cloud, new OMB guidance, the use of contractors, new routine uses, updated contact information, and a notice publication history. The Categories of Individuals Covered by the System section has been expanded to include individuals applying for or receiving Federal assistance. The Categories of Records section has been expanded to account for additional records stored within Integrated Logistics Management Records to include Federal assistance applications and Federal assistance awards, personal service contract payment information, and documentation necessary to process invoices and claims for payment.

SYSTEM NAME AND NUMBER:

Integrated Logistics Management Records, State-70.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

(a) Department of State domestic data centers located within the U.S., with local infrastructure placed overseas at U.S. Embassies, U.S. Consulates General, and U.S. Consulates; and U.S. Missions, (b) within a government cloud platform provided by the Department's Enterprise Server Operations Center (ESOC), 2201 C Street NW, Washington, DC 20520.

SYSTEM MANAGER(S):

Managing Director, Program Management and Policy (A/LM/PMP); Department of State; 1800 N Kent Street; Arlington, VA 22209, reachable at A/LM Front Office, *A-LMFrontOfficeAssistants@state.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 4081, Travel and Related Expenses; 22 U.S.C. 5724, Travel and Transportation Expenses of Employees Transferred; 5 U.S.C. 301, 302, Management of the Department of State; 22 U.S.C. 2581, General Authority; 22 U.S.C. 2651a, Organization of the Department of State; 22 U.S.C. 2677, Availability of Funds for the Department of State; 22 U.S.C. 3921, Management of the Foreign Service; 22 U.S.C. 3927, Responsibility of Chief of Mission; E.O. 9397 (Numbering System for Federal Accounts Relating to Individual Persons); E.O. 9830 (as amended) (Amending the Civil Service Rules and Providing for Federal Personnel Administration); and E.O. 12107 (as amended) (Relating to the Civil Service Commission and Labor-Management in the Federal Service); 22 U.S.C. Chapter 52 Foreign Service; 31 U.S.C. 901–903 Agency Chief Financial Officers; Federal Financial Management Improvement Act of 1996.

PURPOSE(S) OF THE SYSTEM:

The information contained in this system of records is collected and maintained by the Office of Logistics Management, Office of Program Management and Policy (A/LM/PMP) in the administration of its responsibility for providing worldwide logistics services and integrated support. The information collected and maintained in this system of records is necessary to: (1) Ensure fiscal accountability in issuing federal assistance, (2) coordinate the logistics of transporting the household effects of Department of State and other Embassy employees, and contracting services, (3) allow customers to submit and track requests for services, (4) allow service providers to fulfill and track customer requests, and (5) to fulfill ICASS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Civil Service (CS) and Foreign Service (FS) employees of the Department of State (DOS) including members of the Senior Executive Service, Presidential appointees, employees under full-time, part-time, intermittent, temporary, and limited appointments; anyone serving in an advisory capacity (compensated and uncompensated); other agency employees on detail to the Department or stationed at U.S. Missions abroad who use DOS transportation services; former Foreign Service Reserve Officers; Presidential Management Interns, Foreign Affairs Fellowship Program Fellows, student interns and other student summer hires, Stay-in-School student employees, Cooperative Education Program participants, members of the public applying for or receiving Federal assistance; and eligible CS or FS family members. The Privacy Act defines an individual at 5 U.S.C. 552a (a)(2) as a United States citizen or lawful permanent resident.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records about individuals related to procurement, property, logistics management, and Federal Assistance Awards. Specific types of records include:

(a) Travel Authorizations (TAs) which contain name, date of birth, address, email, phone, and the last four digits of the Social Security number (SSN).

(b) Federal Assistance Applications and Federal Assistance Awards, which may include contact information including, but not limited to, applicant or recipient's name, address, telephone number, email address, and tax identification number.

(c) Personal Service Contract payment information, which may include recipient's name, email address, and tax identification number.

(d) Documentation necessary to process invoices and claims for payment, including employee information for reimbursement.

(e) Information necessary to fill out service requests (*e.g.,* office services, technology support, travel and transportation, leasing property and maintenance services, human resources, and security), which may contain business address, personal address, passport number, clearance, citizenship, and last 4 digits of SSN, scans of government-issued IDs (which may include driver's licenses or passport).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in Integrated Logistics Management Records may be disclosed to the following:

(a.) Appropriate agencies, entities, and persons when (1) the Department of State suspects or has confirmed that there has been a breach of the system of records; (2) the Department of State has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of State (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of State efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(b.) Another Federal agency or Federal entity, when the Department of State 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.

(c.) Anyone who is under contract to the Department of State to fulfill an agency function but only to the extent necessary to fulfill that function.

(d.) Service providers to fulfill ICASS services at post or logistics service requests domestically. Service providers may include Department of State employees, locally employed staff at post, private service vendors, or external banks holding the contract to administer the Department's purchase card program.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic format. A description of standard Department of State policies concerning storage of electronic records is found at *https://fam.state.gov/FAM/05FAM/05FAM0440.html.*

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By individual name, address, telephone number, or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retired and destroyed in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA) and outlined at *https://foia.state.gov/Learn/RecordsDisposition.aspx.* The range of disposition for records maintained in the system is one to six years. More specific information may be obtained by writing to the following address: U.S. Department of State; Director, Office of Information Programs and Services;
A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All Department of State network users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified (SBU) information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Department OpenNet network users are required to take the Foreign Service Institute distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Integrated Logistics Management Records, a user must first be granted access to the Department of State computer network.

Department of State employees and contractors may remotely access this system of records using non-Department owned information technology. Such access is subject to approval by the Department's mobile and remote access program and is limited to information

maintained in unclassified information systems. Remote access to the Department's information systems is configured in compliance with OMB Circular A–130 multifactor authentication requirements and includes a time-out function.

All Department of State employees and contractors with authorized access to records maintained in this system of records have undergone a thorough background security investigation. Access to the Department of State, its annexes, and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

The safeguards in the following paragraphs apply only to records that are maintained in government-certified cloud systems. All cloud systems that provide IT services and process Department of State information must be specifically authorized by the Department of State Authorizing Official and Senior Agency Official for Privacy.

Information that conforms with Department-specific definitions for Federal Information Security Modernization Act (FISMA) low, moderate, or high categorization are permissible for cloud usage and must specifically be authorized by the Department's Cloud Program Management Office and the Department of State Authorizing Official. Specific security measures and safeguards will depend on the FISMA categorization of the information in a given cloud system. In accordance with Department policy, systems that process more sensitive information will require more stringent controls and review by Department cybersecurity experts prior to approval. Prior to operation, all Cloud systems must comply with applicable security measures that are outlined in FISMA, FedRAMP, OMB regulations, National Institute of Standards and Technology's (NIST) Special Publications (SP) and Federal Information Processing Standards (FIPS) and Department of State policies and standards.

All data stored in cloud environments categorized above a low FISMA impact risk level must be encrypted at rest and in-transit using a federally-approved encryption mechanism. The encryption keys shall be generated, maintained, and controlled in a Department data center by the Department key management authority. Deviations from these encryption requirements must be approved in writing by the Department of State Authorizing Official. High FISMA impact risk level systems will additionally be subject to continual auditing and monitoring, multifactor authentication mechanism utilizing Public Key Infrastructure (PKI) and NIST 800 53 controls concerning virtualization, servers, storage and networking, as well as stringent measures to sanitize data from the cloud service once the contract is terminated.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520. The individual must specify that he or she wishes the Integrated Logistics Management Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Integrated Logistics Management Records include records pertaining to the individual. Detailed instructions on Department of State procedures for accessing and amending records can be found on the Department's FOIA website at *https://foia.state.gov/Request/Guide.aspx.*

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest record procedures should write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that this system of records may contain information pertaining to them may write to U.S. Department of State; Director, Office of Information Programs and Services; A/GIS/IPS; 2201 C Street NW, Room B–266; Washington, DC 20520. The individual must specify that he/she wishes the Integrated Logistics Management Records to be checked. At a minimum, the individual must include: Full name (including maiden name, if appropriate) and any other names used; current mailing address and zip code; date and place of birth; notarized signature or statement under penalty of perjury; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Integrated Logistics Management Records include records pertaining to the individual.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Previously published at 71 FR 8884.

Eric F. Stein,

Deputy Assistant Secretary, Bureau of Administration, Global Information Services, U.S. Department of State.

[FR Doc. 2022–01346 Filed 1–24–22; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 11626]

Call for Expert Reviewers To Submit Comments on the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Synthesis Report

ACTION: Notice of request for expert review.

SUMMARY: The Department of State, in cooperation with the United States Global Change Research Program (USGCRP), requests expert review of the first draft of Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report (AR6) Synthesis Report (SYR).

DATES: Starting January 10, 2022; public comments are due by March 1, 2022.

ADDRESSES: Experts wishing to contribute to the U.S. government review are encouraged to register via the USGCRP Review and Comment System (*https://review.globalchange.gov/*).

FOR FURTHER INFORMATION CONTACT: Farhan Akhtar, Foreign Affairs Officer, Office of Global Change, (202) 647–3489, *ipcc_fp@state.gov.*

SUPPLEMENTARY INFORMATION: The United Nations Environment Program (UNEP) and the World Meteorological Organization (WMO) established the IPCC in 1988. As reflected in its governing documents, the role of the IPCC is to assess on a comprehensive, objective, open, and transparent basis the scientific, technical, and socio-economic information relevant to understanding the scientific basis of risk

of human-induced climate change, its potential impacts, and options for adaptation and mitigation. IPCC reports should be neutral with respect to policy, although they may need to deal objectively with scientific, technical, and socio-economic factors relevant to the application of particular policies. The principles and procedures for the IPCC and its preparation of reports can be found at: *https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles.pdf* and *https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles-appendix-a-final.pdf.* In accordance with these procedures, IPCC documents undergo peer review by experts and governments. The purpose of these reviews is to ensure the reports present a comprehensive, objective, and balanced view of the subject matter they cover.

According to IPCC procedures, the SYR should ''synthesize and integrate materials contained within the Assessment Reports and Special Reports'' and ''should be written in a non-technical style suitable for policymakers and address a broad range of policy-relevant but policy-neutral questions approved by the Panel''. AR6 SYR content is based on the three Working Group contributions to the AR6 and the three Special Reports undertaken during the cycle:

- The Physical Science Basis (WGI, launched in August 2021)
- Impacts, Adaptation and Vulnerability (WGII, to be released in February 2022)
- Mitigation of Climate Change (WGIII, to be released in March 2022)
- Global Warming of 1.5 °C (SR1.5, 2018)
- Climate Change and Land (SRCCL, 2019)
- The Ocean and Cryosphere in a Changing Climate (SROCC, 2019)

As part of the U.S. government review—starting January 10, 2022—experts wishing to contribute to the U.S. government review are encouraged to register via the USGCRP Review and Comment System (*https://review.globalchange.gov/*). Instructions and the synthesis report draft will be available for download via the system. *In accordance with IPCC policy, drafts of the report are provided for review purposes only and are not to be cited or distributed.* All relevant technical comments received will be forwarded to the IPCC authors for their consideration. To be considered for inclusion in the U.S. government submission, comments must be received by March 1, 2022.

Experts may choose to provide comments directly through the IPCC's expert review process, which occurs in parallel with the U.S. government review: *https://apps.ipcc.ch/comments/ar6syr/fod/register.php.* To avoid duplication, experts are requested to submit comments via either the USGCRP or IPCC review websites, not both.

Farhan Akhtar,

Office of Global Change, Department of State.

[FR Doc. 2022–00811 Filed 1–24–22; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0689; Summary Notice No.–2021–0017]

Petition for Exemption; Summary of Petition Received; Orbest, S.A.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 14, 2022.

ADDRESSES: Send comments identified by docket number [FAA–2019–0689] using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Terry, (202) 267–6109, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Timothy R. Adams,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0689.
Petitioner: Orbest, S.A.
Section(s) of 14 CFR Affected: §§ 91.227(c)(1)(i), and (iii).
Description of Relief Sought: Orbest, S.A. (Orbest) seeks limited relief from the Automatic Dependent Surveillance—Broadcast (ADS–B) Out performance requirements of Navigation Accuracy Category for Position (NAC_P) and Navigation Integrity Category (NIC) as defined in 14 CFR 91.227(c)(1)(i) and 91.227(c)(1)(iii), respectively. The relief sought is similar to that granted by Exemption No. 12555. Orbest seeks this relief until it can meet the accuracy requirements for ADS–B Out in accordance with an impending Service Bulletin.

[FR Doc. 2022–01307 Filed 1–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans and Survivors Pension and Parents' Dependency and Indemnity Compensation Cost of Living Adjustments

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, VA is hereby giving notice of Cost-of-Living Adjustments (COLA) in certain benefit rates and income limitations. These COLAs affect the Pension and Parents' Dependency and Indemnity Compensation (DIC) programs. The rate of the adjustment is tied to the increase in Social Security benefits effective December 1, 2021, as announced by the Social Security Administration (SSA). SSA announced an increase of 5.9%.

DATES: The COLAs became effective December 1, 2021, as required by 38 U.S.C. 5312.

FOR FURTHER INFORMATION CONTACT: David Klusman, Lead Program Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–8863. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 5312 and section 306 of Public Law 95–588, VA is required to increase the benefit rates and income limitations in the Pension and Parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under Title II of the Social Security Act. VA is required to publish the increased rates and income limitations in the **Federal Register**.

The Social Security Administration announced a 5.9% COLA increase in Social Security benefits effective December 1, 2021. Therefore, applying the same percentage and rounding in accordance with 38 CFR 3.29, the following increased rates and income limitations for the VA Pension and Parents' DIC programs became effective December 1, 2021:

I. Pension

A. Maximum Annual Rates for Veterans

(1) Veterans permanently and totally disabled (38 U.S.C. 1521):

(a) Veteran with no dependents, $14,753.

(b) Veteran with one dependent, $19,320.

(c) For each additional dependent, $2,523.

(2) Veterans in need of aid and attendance (38 U.S.C. 1521):

(a) Veteran with no dependents, $24,610.

(b) Veteran with one dependent, $29,175.

(c) For each additional dependent, $2,523.

(3) Veterans who are housebound (38 U.S.C. 1521):

(a) Veteran with no dependents, $18,029.

(b) Veteran with one dependent, $22,596.

(c) For each additional dependent, $2,523.

(4) Two Veterans married to one another, combined rates (38 U.S.C. 1521):

(a) Neither Veteran in need of aid and attendance or housebound, $19,320.

(b) Either Veteran in need of aid and attendance, $29,175.

(c) Both Veterans in need of aid and attendance, $39,036.

(d) Either Veteran housebound, $22,596.

(e) Both Veterans housebound, $25,870.

(f) One Veteran housebound and one Veteran in need of aid and attendance, $32,443.

(g) For each dependent child, $2,523.

(5) Net worth limit under 38 CFR 3.274(a): For purposes of entitlement to VA pension, the net worth limit effective December 1, 2021, is $138,489.

(6) Monthly Penalty Rate under 38 CFR 3.276(e)(1):

(a) The monthly penalty rate is $2,431.

(b) Mexican border period and World War I Veterans: The applicable maximum annual rate payable to a Mexican border period or World War I Veteran under this table shall be the applicable rate under paragraphs (1)–(4), increased by $3,353. (38 U.S.C. 1521(g)).

B. Maximum Annual Rates for Survivor Beneficiaries

(1) Surviving spouse alone and with a child or children of the deceased Veteran in custody of the surviving spouse (38 U.S.C. 1541):

(a) Surviving spouse alone, $9,896.

(b) Surviving spouse and one child in his or her custody, $12,951.

(c) For each additional child in his or her custody, $2,523.

(2) Surviving spouses in need of aid and attendance (38 U.S.C. 1541 and 1536):

(a) Surviving spouse alone, $15,816.

(b) Surviving spouse with one child in custody, $18,867.

(c) Surviving Spouse of Spanish-American War Veteran alone, $16,456.

(d) Surviving Spouse of Spanish-American War Veteran with one child in custody, $19,438.

(e) For each additional child in his or her custody, $2,523.

(3) Surviving spouses who are housebound (38 U.S.C. 1541):

(a) Surviving spouse alone, $12,094.

(b) Surviving spouse and one child in his or her custody, $15,144.

(c) For each additional child in his or her custody, $2,523.

(4) Surviving child alone (38 U.S.C. 1542), $2,523.

(5) Net worth limit under 38 CFR 3.274(a): For purposes of entitlement to VA pension, the net worth limit effective December 1, 2021, is $138,489.

(6) Monthly Penalty Rate under 38 CFR 3.276(e)(1):

(a) The monthly penalty rate effective December 1, 2021, is $2,431.

(b) Reduction for income: The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

C. Section 306 Pension Income Limitations

(1) Veteran or surviving spouse with no dependents, $16,780 (Pub. L. 95–588, 306(a)).

(2) Veteran in need of aid and attendance with no dependents, $17,384 (38 U.S.C. 1521(d) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $22,555 (Pub. L. 95–588, 306(a)).

(4) Veteran in need of aid and attendance with one or more dependents, $23,157 (38 U.S.C. 1521(d) as in effect on December 31, 1978).

(5) Child (no entitled Veteran or surviving spouse), $13,721 (Pub. L. 95–588, 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $5,359 (Pub. L. 95–588, 306(a)(2)(B)).

D. Old-Law Pension Income Limitations

(1) Veteran or surviving spouse without dependents or an entitled child, $14,694 (Pub. L. 95–588, 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $21,177 (Pub. L. 95–588, 306(b)).

II. Parents' DIC

A. DIC shall be paid monthly to parents of a deceased Veteran in the following amounts (38 U.S.C. 1315):

(1) One parent (38 U.S.C. 1315(b)): If there is only one parent, the monthly rate of DIC paid to such parent shall be $712, reduced on the basis of the parent's annual income according to the following formula:

(a) For each $1 of annual income which is more than $0.00 but not more than $800, the $712 monthly rate shall not be reduced.

(b) For each $1 of annual income which is more than $800 but not more than $9,638, the monthly rate shall be reduced by $0.08.

(c) For each $1 of annual income which is more than $9,638, the monthly rate will not be reduced.

(d) No Parents' DIC is payable under this table if annual income exceeds $16,780.

(2) One parent who has remarried: If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under 38 U.S.C. 1315(b) or under 38 U.S.C. 1315(d), whichever shall result in the greater benefit being paid to the Veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

(3) One of two parents not living with spouse (38 U.S.C. 1315(c)): The rates below apply to (1) two parents who are not living together or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $516 reduced on the basis of each parent's annual income, according to the following formula:

(a) For each $1 of annual income which is more than $0 but not more than $800, the $516 monthly rate shall not be reduced.

(b) For each $1 of annual income which is more than $800 but not more than $7,188, the monthly rate shall be reduced by $0.08.

(c) For each $1 of annual income which is more than $7,188, the monthly rate shall not be reduced.

(d) No Parents' DIC is payable under this table if annual income exceeds $16,780.

(4) One of two parents living with spouse or other parent (38 U.S.C. 1315(d)): The rates below apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $486 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

(a) For each $1 of annual income which is more than $0 but not more than $1,000, the $486 monthly rate shall not be reduced.

(b) For each $1 of annual income which is more than $1,000 but not more than $1,100, the monthly rate shall be reduced by $0.03.

(c) For each $1 of annual income which is more than $1,100 but not more than $1,200, the monthly rate shall be reduced by $0.04.

(d) For each $1 of annual income which is more than $1,200 but not more than $1,300, the monthly rate shall be reduced by $0.05.

(e) For each $1 of annual income which is more than $1,300 but not more than $1,600, the monthly rate shall be reduced by $0.06.

(f) For each $1 of annual income which is more than $1,600 but not more than $1,800, the monthly rate shall be reduced by $0.07.

(g) For each $1 of annual income which is more than $1,800 but not more than $7,238, the monthly rate shall be reduced by $0.08.

(h) For each $1 of annual income which is more than $7,238, the monthly rate shall not be reduced.

B. No Parents' DIC is payable if the annual income exceeds $22,555.

C. These rates are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in the rates for 38 U.S.C. 1315(b) for one parent.

D. Aid and attendance: The monthly rate of DIC payable to a parent per the guidelines above shall be increased by $386 if such parent is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

E. Minimum rate: The monthly rate of DIC payable to any parent shall not be less than $5.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on January 18, 2022, 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.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2022–01333 Filed 1–24–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Tuesday,
No. 16 January 25, 2022

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Guidance on Passive Foreign Investment Companies and Controlled Foreign Corporations Held by Domestic Partnerships and S Corporations and Related Person Insurance Income; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118250–20]

RIN 1545–BP94

Guidance on Passive Foreign Investment Companies and Controlled Foreign Corporations Held by Domestic Partnerships and S Corporations and Related Person Insurance Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the treatment of domestic partnerships and S corporations that own stock of passive foreign investment companies (''PFICs'') and their domestic partners and shareholders (the ''proposed regulations''). The proposed regulations also provide guidance regarding the determination of the controlling domestic shareholders of foreign corporations, the owner of a controlled foreign corporation (''CFC'') or qualified electing fund (''QEF'') that makes an election under section 1411, the treatment of S corporations with accumulated earnings and profits under subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code (''subpart F'' of the ''Code''), and the determination and inclusion of related person insurance income (''RPII'') under section 953(c). The proposed regulations affect United States persons that own, directly or indirectly, stock in certain foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by *April 25, 2022.* Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–118250–20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (''Treasury Department'') and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send hard copy submissions to: CC:PA:LPD:PR (REG–118250–20), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under §§ 1.958–1(d), 1.964–1, 1.1291–1, 1.1291–9, 1.1293–1, 1.1295–1, 1.1296–1, 1.1297–0, 1.1297–3, 1.1298–1, 1.1298–3, and 1.1411–10, Edward Tracy at (202) 317–6934; concerning proposed regulation § 1.958–1(e), Jennifer N. Keeney at (202) 317–5045; concerning proposed regulation § 1.953–3, Raphael Cohen at (202) 317–3756 or Josephine Firehock at (202) 317–6938; concerning submissions of comments or requests for a public hearing, Regina Johnson at (202) 317–5177 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. Regulations Addressing the Treatment of Domestic Partnerships for Purposes of Sections 951(a) and 951A

On October 10, 2018, the Treasury Department and the IRS published in the **Federal Register** proposed regulations under section 951A (REG–104390–18, 83 FR 51072) (''2018 proposed regulations''). The 2018 proposed regulations provided a hybrid approach to the treatment of a domestic partnership that is a United States shareholder, as defined in section 951(b) (''U.S. shareholder''), with respect to a CFC (''U.S. shareholder partnership''). Under the hybrid approach, a U.S. shareholder partnership would determine its section 951A inclusion, and the partners of the partnership that were not also U.S. shareholders of the CFC (''non-U.S. shareholder partners'') would take into account their distributive share of the inclusion. *See* proposed § 1.951A–5(b), 83 FR 51072, 51101. Partners that were themselves U.S. shareholders of a CFC (''U.S. shareholder partners'') would not take into account their distributive share of the partnership's global intangible low-taxed income (''GILTI'') inclusion amount and instead would be treated as proportionately owning the stock of the CFC within the meaning of section 958(a) as if the domestic partnership were a foreign partnership. *See* proposed § 1.951A–5(c), 83 FR 51072, 51101–51102.

On June 21, 2019, the Treasury Department and the IRS published final regulations (TD 9866) in the **Federal Register** (84 FR 29288, as corrected at 84 FR 44223, 84 FR 44693, and 84 FR 53052) under sections 951, 951A, 1502, and 6038 that include guidance with respect to the treatment of domestic partnerships that own stock in CFCs for purposes of section 951A (the ''final section 951A regulations''). The final section 951A regulations did not adopt the hybrid approach set forth in the 2018 proposed regulations and instead generally treat a domestic partnership as an aggregate of all of its partners for purposes of computing income inclusions under section 951A (and other provisions that apply by reference to section 951A). The final section 951A regulations apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. § 1.951A–7. On the same date, the Treasury Department and the IRS published proposed regulations (REG–101828–19) in the **Federal Register** (84 FR 29114) that extended this aggregate treatment of domestic partnerships for purposes of computing subpart F inclusions under section 951 (the ''2019 proposed regulations'').

In the preamble to the 2019 proposed regulations, the Treasury Department and the IRS requested comments on the application of sections 1291 and 1293 through 1298 of the Code (the ''PFIC regime'') to domestic partnerships that directly or indirectly own PFIC stock and their domestic partners, including the operation of the PFIC regime with respect to non-U.S. shareholder partners of domestic partnerships under section 1297(d). 84 FR 29120. The 2019 proposed regulations are issued, with modifications, as final regulations in the Rules and Regulations section of this issue of the **Federal Register** (the ''final regulations'').

On August 22, 2019, the Treasury Department and the IRS released Notice 2019–46, 2019–37 I.R.B. 695, announcing the intention to issue regulations that will permit a domestic partnership or S corporation to apply the hybrid approach set forth in proposed § 1.951A–5 for taxable years ending before June 22, 2019 (that is, the hybrid approach set forth in the 2018 proposed regulations, which was revised in the 2019 final section 951A regulations to reflect an aggregate approach for purposes of section 951A). The notice also addressed the applicability of penalties in the case of a domestic partnership or S corporation that consistently applied proposed

§ 1.951A–5 on or before June 21, 2019, but filed a tax return consistent with the final section 951A regulations under § 1.951A–1(e). The notice was issued to address the compliance burden, and related penalty exposure, of domestic partnerships and S corporations that filed returns based on the hybrid approach set forth in the 2018 proposed regulations for taxable years ending before June 22, 2019, but later became subject to the aggregate approach of § 1.951A–1(e) for those years.

II. Treatment of Domestic Partnerships as Entities or Aggregates of their Partners—In General

For purposes of applying a particular provision of the Code, a partnership may be treated as either an entity separate from its partners or as an aggregate of its partners. Under the aggregate approach, the partners of a partnership, and not the partnership, are treated as owning the partnership's assets and conducting the partnership's operations. Under the entity approach, the partnership is respected as separate and distinct from its partners, and therefore the partnership, and not the partners, is treated as owning the partnership's assets and conducting the partnership's operations. Whether the aggregate or entity approach applies depends on which approach is more appropriate to carry out the scope and purpose of a particular Code provision. *See* H.R. Rep. No. 83–2543, at 59 (1954) (Conf. Rep.) (''Both the House provisions and the Senate amendment provide for the use of the 'entity' approach in the treatment of transactions between a partner and a partnership . . . . No inference is intended, however, that a partnership is to be considered as a separate entity for the purpose of applying other provisions of the internal revenue laws if the concept of the partnership as a collection of individuals is more appropriate for such provisions.''); *see also Holiday Village Shopping Center* v. *United States,* 5 Cl. Ct. 566, 570 (1984), aff'd 773 F.2d 276 (Fed. Cir. 1985) (''[T]he proper inquiry is not whether a partnership is an entity or an aggregate for purposes of applying the internal revenue laws generally, but rather which is the more appropriate and more consistent with Congressional intent with respect to the operation of the particular provision of the Internal Revenue Code at issue.''); *Casel* v. *Commissioner,* 79 T.C. 424, 433 (1982) (''When the 1954 Code was adopted by Congress, the conference report . . . clearly stated that whether an aggregate or entity theory of partnerships should be applied to a particular Code section depends upon which theory is more appropriate to such section.''); § 1.701–2(e)(1) (''The Commissioner can treat a partnership as an aggregate of its partners in whole or in part as appropriate to carry out the purpose of any provision of the Internal Revenue Code or the regulations promulgated thereunder.'').

Consistent with this authority under subchapter K, the Treasury Department and the IRS have previously adopted the aggregate approach to partnerships to carry out the purpose of various provisions, including international provisions, of the Code. In addition to applying the aggregate approach for purposes of determining section 951 and section 951A inclusions in the final section 951A regulations and the final regulations, regulations under section 871 apply the aggregate approach in applying the 10 percent shareholder test of section 871(h)(3) to determine whether interest paid to a partnership would be considered portfolio interest under section 871(h)(2). § 1.871–14(g)(3)(i). The aggregate approach was also adopted in regulations issued under section 367(a) to address the transfer of property by a domestic or foreign partnership to a foreign corporation in an exchange described in section 367(a)(1). *See* § 1.367(a)–1T(c)(3)(i)(A). Similarly, the Treasury Department and the IRS adopted the aggregate approach for purposes of applying the regulations under section 367(b). *See* § 1.367(b)–2(k); *see also* §§ 1.367(e)–1(b)(2) (treating stock and securities of a distributing corporation owned by or for a partnership (domestic or foreign) as owned proportionately by its partners) and 1.861–9(e)(2) (requiring certain corporate partners to apportion interest expense, including the partner's distributive share of partnership interest expense, by reference to the partner's assets).

III. PFIC Rules

A. Section 1291

Under section 1291, a United States person (''U.S. person'') may be subject to ordinary income treatment and an interest charge when it receives an ''excess distribution'' from a PFIC or recognizes gain on the sale or disposition of PFIC stock (the ''excess distribution rules''). These charges are determined based on the person's holding period and the years in which the foreign corporation qualified as a PFIC. The excess distribution rules do not apply, however, if a shareholder makes certain elections with respect to the PFIC for its entire holding period of the PFIC stock.

The Treasury regulations under section 1291 apply the excess distribution rules to ''shareholders'' of a PFIC. *See* § 1.1291–1(b)(2)(v). Under § 1.1291–1(b)(7), a ''shareholder'' of a PFIC generally is defined as a U.S. person that owns PFIC stock directly or indirectly through certain corporations or pass-through entities (an ''indirect shareholder''), within the meaning of section 1298(a) and § 1.1291–1(b)(8) (collectively, a ''PFIC shareholder''). For purposes of sections 1291 and 1298, neither a domestic partnership nor an S corporation is treated as a PFIC shareholder except for purposes of any information reporting requirements (including the requirement to file an annual report under section 1298(f)) or where otherwise explicitly provided in regulations. Section 1.1291–1(b)(8)(iii)(A) and (B) provides that if a domestic partnership or S corporation owns PFIC stock, the partners or S corporation shareholders, respectively, are considered to own the PFIC stock proportionately in accordance with their ownership interests. As a result, if a domestic partnership or S corporation owns PFIC stock, the excess distribution rules apply at the partner or S corporation shareholder level.

B. Qualified Electing Funds

A PFIC shareholder may elect to treat the PFIC as a QEF (a ''QEF election'') under the rules in sections 1293 through 1295 (the ''QEF rules''). Under the QEF rules, provided the PFIC complies with certain information reporting requirements, the PFIC shareholder includes its pro rata share of the ordinary earnings and net capital gain generated by the QEF on a current basis under section 1293(a) (''QEF inclusions''), and any gain on a future disposition of the QEF shares may be treated as capital gain not subject to the excess distribution rules. Unlike for the excess distribution rules, under § 1.1295–1(j) domestic partnerships and S corporations are treated as PFIC shareholders for purposes of the QEF rules. A PFIC shareholder making a valid QEF election effective as of the beginning of its holding period in the PFIC stock is not subject to the excess distribution rules with respect to that PFIC (a ''pedigreed QEF''). Conversely, a PFIC shareholder that makes a QEF election effective after the beginning of its holding period in the PFIC stock is simultaneously subject to the excess distribution rules and the QEF rules with respect to that PFIC (an ''unpedigreed QEF'').

A domestic partnership or S corporation that owns PFIC stock generally makes the QEF election with

respect to the PFIC under § 1.1295–1(d)(2)(i)(A) and (d)(2)(ii). Section 1.1293–1(c)(1) provides that the domestic partnership or S corporation recognizes any QEF inclusions at the entity level, and each U.S. person that is an interest holder in the domestic partnership or S corporation takes into account its pro rata share of the inclusions.

C. Mark-to-Market PFICs

Under section 1296 (the ''mark-to-market (MTM) rules''), if stock in a PFIC is marketable stock (''section 1296 stock''), a U.S. person owning that stock can make a mark-to-market election with respect to the PFIC (an ''MTM election''). For this purpose, pursuant to section 1296(g)(1), U.S. persons may be deemed to own certain marketable stock held by foreign partnerships, trusts, or estates. Section 1296(a) provides that if a U.S. person makes an MTM election with respect to a PFIC, the U.S. person is treated as if it sold the section 1296 stock at the end of each year, with any gain being recognized as ordinary income (''MTM gain'') and any loss potentially resulting in a deduction (''MTM loss,'' and together with MTM gains, ''MTM amounts'').

If a domestic partnership or an S corporation owns, or is treated as owning under § 1.1296–1(e) (providing ownership rules for PFIC stock owned through certain foreign entities), section 1296 stock, the domestic partnership or S corporation can make an MTM election with respect to the PFIC because the election is made by the U.S. person owning or treated as owning the stock. *See* § 1.1296–1(h)(1)(i). The domestic partnership or S corporation, by virtue of being a U.S. person, includes or deducts any MTM amounts at the entity level. *See* § 1.1296–1(c)(1) and (3).

D. CFC/PFIC Overlap

Section 957(a) defines a CFC as any foreign corporation in which U.S. shareholders own (within the meaning of section 958(a)), or are considered as owning by applying the ownership rules of section 958(b), more than 50 percent of the total combined voting power or value of the stock of the corporation on any day during the taxable year of the corporation. Under section 951(b), a U.S. shareholder is a U.S. person that owns (within the meaning of section 958(a)), or is considered as owning by applying the ownership rules of section 958(b), at least 10 percent of the total combined voting power of all classes of stock entitled to vote or at least 10 percent of the total value of all classes of stock of a foreign corporation. Section 957(c) defines a U.S. person by reference to section 7701(a)(30), which defines the term as a citizen or resident of the United States, a domestic partnership, a domestic corporation, and certain domestic estates and trusts.

Under section 1297(d), a foreign corporation that is both a CFC and a PFIC (a ''CFC/PFIC'') is not considered to be a PFIC with respect to a shareholder during the shareholder's qualified portion (as defined in section 1297(d)(2)) of its holding period (the ''CFC overlap rule''). The term ''qualified portion'' generally means the portion of the shareholder's holding period during which the shareholder is a U.S. shareholder with respect to the PFIC and during which the PFIC is also a CFC. Generally, this means that the PFIC regime should not apply to a U.S. person that is subject to the subpart F rules. The legislative history to the CFC overlap rule indicates that it was enacted due to concern about the simultaneous application of the subpart F and PFIC regimes to the same shareholders, explaining that ''a shareholder that is subject to current inclusion under the subpart F rules with respect to stock of a PFIC that is also a CFC generally is not subject also to the PFIC provisions with respect to the same stock.'' H.R. Rep. 105–148, at 534 (1997).

E. PFIC Purging Elections

1. Section 1291(d)(2) Purging Elections

Under section 1291(d)(2), a PFIC shareholder that owns, or is treated as owning, shares in an unpedigreed QEF may make certain elections to ''purge'' the PFIC taint and thereby no longer be subject simultaneously to the excess distribution and QEF rules with respect to that PFIC. Under section 1291(d)(2)(A) and § 1.1291–10, a PFIC shareholder may elect to recognize any gain on a deemed disposition of its PFIC stock with the gain being subject to the excess distribution rules. Alternatively, under section 1291(d)(2)(B) and § 1.1291–9, if the unpedigreed QEF is also a CFC (that is, it is a CFC/PFIC), the PFIC shareholder may elect to include its share of the CFC/PFIC's post-1986 accumulated earnings and profits (''E&P'') as a dividend subject to the excess distribution rules (together with the election described in the preceding sentence, the ''section 1291 purging elections''). The section 1291 purging elections are made by a PFIC ''shareholder'' as defined in § 1.1291–9(j)(3), which is a U.S. person that is a shareholder or indirect shareholder, as defined in § 1.1291–1(b)(7) or (8), respectively. If the PFIC shareholder makes one of the section 1291 purging elections, the QEF is a pedigreed QEF with respect to the shareholder.

2. Section 1298(b)(1) Purging Elections

Pursuant to section 1298(b)(1) and § 1.1298–3, a PFIC shareholder may make certain purging elections with respect to a foreign corporation that qualifies as a ''former PFIC'' or a ''section 1297(e) PFIC.'' These purging elections result in the foreign corporation no longer being treated as a PFIC as to the shareholder.

Under § 1.1291–9(j)(2)(iv), a ''former PFIC'' is a foreign corporation that satisfies neither the income test nor the asset test under section 1297(a), but its stock held by the PFIC shareholder is treated as stock of a PFIC as a result of section 1298(b)(1) (that is, the corporation was a PFIC that was not a QEF at some time during the PFIC shareholder's holding period). Pursuant to § 1.1291–9(j)(2)(v), a foreign corporation is a ''section 1297(e) PFIC'' [1] if it (i) qualifies as a PFIC under section 1297(a) on the first day on which the ''qualified portion'' (as defined in section 1297(d)(2)) of the PFIC shareholder's holding period in the foreign corporation begins (as determined under section 1297(e)(2)); and (ii) the stock of the foreign corporation held by the PFIC shareholder is treated as stock of a PFIC pursuant to section 1298(b)(1) because at any time during the PFIC shareholder's holding period of the stock, other than the qualified portion, the corporation was a PFIC that was not a QEF.

Similar to the section 1291 purging elections, under §§ 1.1297–3 and 1.1298–3, a PFIC shareholder can make either a deemed sale election or deemed dividend purging election with respect to either a former PFIC or section 1297(e) PFIC (the ''section 1298 purging elections'' and, together with the section 1291 purging elections, the ''PFIC purging elections''). The rules applicable to the section 1298 purging elections in §§ 1.1297–3(a) and 1.1298–3(a) are substantially the same as those applicable to the section 1291 purging elections, including that each section 1298 purging election is made by a PFIC ''shareholder'' as defined in § 1.1291–9(j)(3).

[1] Although the PFIC regulations use the term ''section 1297(e)'' PFIC, the term refers to CFC/PFICs under current section 1297(d). The regulations were issued before section 1297(e) was redesignated as section 1297(d) by the Tax Technical Corrections Act of 2007, Public Law 110–172, sec. 11(a)(24)(A), Dec. 29, 2007, 121 Stat 2473.

F. PFIC Information Reporting Requirements Under Section 1298(f)

Under section 1298(f), each U.S. person that is a PFIC shareholder as defined in § 1.1291–1(b)(7) must file an annual report with respect to the PFIC containing the information required by the IRS. Generally, pursuant to § 1.1298–1(b)(1), a U.S. person that is a PFIC shareholder must file Form 8621, ''Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund,'' if, during the shareholder's taxable year, it is (i) a direct PFIC shareholder; (ii) an indirect PFIC shareholder that holds any interest in the PFIC through one or more foreign entities; or (iii) an indirect PFIC shareholder that is treated as the owner of any portion of a domestic grantor trust that owns stock of a PFIC directly or through one or more foreign entities.

Certain other indirect PFIC shareholders are also required to file Form 8621. Specifically, under § 1.1298–1(b)(2)(i), an indirect PFIC shareholder that owns stock of a PFIC through one or more U.S. persons must file Form 8621 with respect to the PFIC if, during the indirect shareholder's taxable year, it is (i) treated as receiving an excess distribution with respect to the PFIC; (ii) treated as recognizing gain that is treated as an excess distribution as a result of a disposition of the PFIC; (iii) required to recognize QEF inclusions under section 1293(a); (iv) required to include or deduct MTM amounts under section 1296(a); or (v) required to report the status of an election under section 1294 with respect to the PFIC. However, under § 1.1298–1(b)(2)(ii), an indirect PFIC shareholder that is required to either recognize QEF inclusions under section 1293(a) or MTM amounts under section 1296(a) is generally not required to file Form 8621 if another PFIC shareholder through which the indirect PFIC shareholder owns its interest in the PFIC timely files Form 8621. Thus, if an indirect PFIC shareholder is treated as owning an interest in a PFIC by reason of an interest in a domestic partnership or S corporation and the domestic partnership or S corporation recognizes QEF inclusions or MTM amounts and timely files Form 8621, the indirect PFIC shareholder is generally not required to file Form 8621. Pursuant to § 1.1298–1(b)(2)(ii), this exception does not apply to a PFIC shareholder that transfers stock in a PFIC subject to a QEF election to a domestic partnership or S corporation if the domestic partnership or S corporation does not make a QEF election with respect to the PFIC after the transfer, in which case the transferor-PFIC shareholder is still required to file Form 8621.

G. Section 1298 Attribution of Ownership Provisions

For purposes of the entire PFIC regime, section 1298(a) contains various attribution rules that generally apply to treat stock of a PFIC as owned by a U.S. person. However, pursuant to section 1298(a)(1)(B), except as provided in regulations, section 1298(a) does not apply to treat stock owned (or treated as owned) by a U.S. person as owned by any other person. Under section 1298(a)(3), stock owned directly or indirectly by a partnership, estate, or trust is considered as being owned proportionately by its partners or beneficiaries.

IV. Subpart F Rules

A. Controlling Domestic Shareholders

The controlling domestic shareholders of a foreign corporation take certain actions with respect to the foreign corporation, such as electing the method of calculating its E&P under section 964(a). *See* § 1.964–1(c)(3). Under § 1.964–1(c)(5)(i), the controlling domestic shareholders of a CFC are defined as the United States shareholders, within the meaning of section 951(b) or section 953(c), that, in the aggregate, own (within the meaning of section 958(a)) more than 50 percent of the total combined voting power of all classes of stock of the CFC entitled to vote and that undertake to act on the CFC's behalf. If the more than 50 percent ownership requirement is not satisfied, the controlling domestic shareholders of the CFC are all of the U.S. shareholders that own (within the meaning of section 958(a)) stock of the CFC. Under § 1.964–1(c)(5)(ii), with respect to a noncontrolled section 902 corporation (as defined in section 904(d)(2)(E)), the controlling domestic shareholders are the majority domestic corporate shareholders, which are those domestic corporations that meet certain ownership requirements under section 902(a) (as it existed before its repeal in 2017) and that own, directly or indirectly, more than 50 percent of the combined voting power of the stock of the noncontrolled section 902 corporation owned, directly or indirectly, by all domestic corporations. Under § 1.964–1(c)(3)(iii), a controlling domestic shareholder that takes actions with respect to a foreign corporation under § 1.964–1(c)(3) must provide notice of those actions to certain other domestic shareholders of the foreign corporation.

With respect to a U.S. shareholder partnership, the 2019 proposed regulations provided that aggregate treatment does not apply for purposes of determining whether any U.S. shareholder is a controlling domestic shareholder. Proposed § 1.958–1(d)(2). In response to a request for comments on this rule in the preamble to the 2019 proposed regulations, one comment was received. That comment recommended, on balance, that aggregate treatment should not apply for purposes of determining whether a U.S. shareholder is a controlling domestic shareholder for purposes of section 964.

The final regulations do not extend aggregate treatment for purposes of determining controlling domestic shareholders of foreign corporations and, thus, adopt the exception included in the 2019 proposed regulations. § 1.958–1(d)(2)(v).

B. Treatment of S Corporation Distributions Under Section 1368 and Treatment of S Corporations and S Corporation Shareholders Under Section 1373 and Subpart F

1. S Corporation Distributions

Section 1368(b) and (c) provides for the treatment of distributions made by an S corporation (as defined in section 1361(a)(1)) with respect to its stock to which section 301(c) would apply but for section 1368(a). Section 1368(b) addresses the treatment of those distributions by an S corporation that does not have accumulated E&P (''AE&P''). Section 1368(b)(1) provides that a distribution by an S corporation is not included in the gross income of an S corporation shareholder to the extent that the amount of the distribution does not exceed the shareholder's adjusted basis in its S corporation stock. Section 1368(b)(2) provides that, if the amount of the distribution exceeds the shareholder's adjusted basis in its S corporation stock, that excess is treated as gain from the sale or exchange of property.

Section 1368(c) addresses the treatment of distributions by an S corporation that has AE&P (for example, if the S corporation generated E&P in years before its election to be treated as an S corporation) and therefore has an accumulated adjustments account (''AAA''), as defined by section 1368(e)(1). AE&P does not include amounts that would increase an S corporation's AAA. *See* section 1371(c). Accordingly, an S corporation's AAA functions similarly to the stock basis adjustment rules of section 1367 and is increased to account for income taxed to its shareholders. *See* section

1368(e)(1)(A). AAA is limited to income generated by the corporation during its status as an S corporation and preserves the single-level-of-tax treatment to S corporation shareholders.

With regard to distributions by S corporations with AE&P, section 1368(c) first applies the distribution to the S corporation's AAA. Section 1368(c)(1) provides that the portion of the distribution that does not exceed the S corporation's AAA is governed by section 1368(b) and is either not included in a shareholder's gross income (if that amount does not exceed the shareholder's adjusted basis in its S corporation stock) or is treated as gain from the sale or exchange of property (if that amount does not exceed the S corporation's AAA but exceeds the shareholder's adjusted basis in its S corporation stock). After the application of section 1368(c)(1), section 1368(c)(2) provides that any remaining portion of the distribution that exceeds the amount of the S corporation's AAA is treated as a dividend (as defined in section 316) to the extent of the S corporation's remaining AE&P. Lastly, under section 1368(c)(3), the portion of the distribution remaining after the application of section 1368(c)(1) and (2) is governed by section 1368(b) and either not included in gross income or treated as gain, depending on the shareholder's adjusted basis in its S corporation stock.

2. Treatment of S Corporations for Purposes of Subpart F

Section 1373(a) provides that an S corporation is treated as a domestic partnership and its shareholders as partners of a domestic partnership for purposes of subpart F of the Code, which includes sections 951, 951A, and 958. Therefore, under § 1.958–1(d)(1) of the final regulations, for purposes of determining section 951 or section 951A inclusions with respect to a CFC owned by an S corporation, the S corporation is not treated as owning the CFC's stock within the meaning of section 958(a). Instead, the CFC stock is treated as owned by a foreign partnership for purposes of determining the U.S. person that owns the CFC stock within the meaning of section 958(a).

As a result, section 951 or section 951A inclusions with respect to CFC stock held by an S corporation are determined and taken into account at the S corporation shareholder level but only if the S corporation shareholder is a U.S shareholder of the CFC. With respect to S corporations with AE&P, this aggregate treatment does not increase the S corporation's AAA because any section 951 or section 951A inclusions are taken into account directly by the S corporation shareholders. An S corporation's AAA generally is increased, however, by dividends received by the S corporation from a foreign corporation even if the E&P from which the dividend distributions are made is attributable to amounts that are, or have been, included in gross income of one or more shareholders of the S corporation under section 951(a) or 951A(a). *See* section 1368(e)(1)(A). In contrast, if section 951 and 951A amounts were included by a S corporation, the S corporation's AAA would not be increased for distributions excluded from the S corporation's gross income pursuant to section 959(a).

3. Notice 2020–69

In response to the final section 951A regulations, a comment asserted that aggregate treatment for purposes of computing section 951A inclusions is inappropriate for S corporations, notwithstanding the language of section 1373(a) (treating an S corporation as a partnership and S corporation shareholders as partners of a partnership), particularly where an S corporation has AE&P. Specifically, the comment suggested that the aggregate approach creates a mismatch between when S corporation shareholders recognize income with respect to a CFC and the creation of AAA maintained by the S corporation. This mismatch can cause certain distributions out of AE&P made by an S corporation to be taxable to its shareholders despite the fact that the shareholders were already taxed on the CFC's earnings under the final section 951A regulations.

Notice 2020–69, 2020–39 I.R.B. 604, released on September 1, 2020, announced that the Treasury Department and the IRS intend to issue regulations under section 958 to ease the transition of S corporations with AE&P on September 1, 2020, from the historic entity treatment (and the hybrid treatment under proposed § 1.951A–5) to the aggregate treatment required under the final section 951A regulations (the ''S corporation transition approach''). Under the S corporation transition approach, an S corporation is subject to entity treatment with respect to a taxable year if (i) an election is made; (ii) the corporation has elected S corporation status before June 22, 2019; (iii) the S corporation would be treated as owning, within the meaning of section 958(a), stock of a CFC on June 22, 2019, if entity treatment applied; (iv) the S corporation has ''transition AE&P'' on September 1, 2020, or on the first day of any subsequent taxable year; and (v) the S corporation maintains records to support the determination of the transition AE&P amount. Under this entity treatment, an S corporation that owns stock of a CFC is treated as owning, within the meaning of section 958(a), the CFC stock for purposes of applying section 951A such that the S corporation determines its GILTI inclusion amount, and its shareholders take into account their distributive share of that amount. Generally, an electing S corporation is treated as an entity under the S corporation transition approach until the first taxable year for which it has no transition AE&P on the first day of that year, at which point it is treated as an aggregate of its shareholders for that year and each successive year.

C. Related Person Insurance Income

Section 952(a) provides that subpart F income includes insurance income, as defined in section 953. Under section 953(c)(2), RPII is any insurance income (as defined in section 953(a)) attributable to a policy of insurance or reinsurance that directly or indirectly insures a United States shareholder (as defined in section 953(c)(1)(A)) of the controlled foreign corporation (as defined in section 953(c)(1)(B)), or a person related to that shareholder. Under section 953(c)(1)(A), the term ''United States shareholder'' means, with respect to any foreign corporation, a U.S. person (as defined in section 957(c)) who owns (within the meaning of section 958(a)) any stock of the foreign corporation (''RPII U.S. shareholder''). Section 953(c)(1)(B) provides that the term ''controlled foreign corporation'' has the meaning given to such term by section 957(a) determined by substituting ''25 percent or more'' for ''more than 50 percent'' (''RPII CFC'').

On April 17, 1991, the Treasury Department and the IRS published in the **Federal Register** proposed regulations under section 953 (INTL–939–86, 56 FR 15540) (the ''1991 proposed regulations''). Section 1.953–3 of the 1991 proposed regulations contains, among other provisions, general rules for determining RPII and definitions that apply for RPII purposes. Section 1.953–3(b)(1) of the 1991 proposed regulations defines RPII as premium and investment income attributable to a policy of insurance or reinsurance that provides insurance coverage to a related insured on risks located outside the RPII CFC's country of incorporation and also provides an analogous rule for annuity contracts.

Section 1.953–3(b)(5) of the 1991 proposed regulations provides that insurance income attributable to a cross-insurance arrangement is treated as

RPII. In general, a cross-insurance arrangement is an arrangement in which a RPII CFC insures a person that is not a related insured and, as part of the same arrangement, another person insures a person that would be a related insured if insured by the RPII CFC.

The cross-insurance rule was issued pursuant to section 953(c)(8)(A), which as the Conference Report states, ''*requires* the Secretary to prescribe such regulations as may be necessary to carry out the purposes of the new sub-part F rules for captive insurers, including regulations preventing the avoidance of the new rules through cross-insurance arrangements or otherwise.'' H.R. Rep. No. 99–841 at II–620 (Sep. 18, 1986) (emphasis added). Congress recognized the need for regulations because cross-insurance can be used to replicate the economics and tax benefits of a captive insurance arrangement through cooperative risk sharing while improperly avoiding the application of section 953(c)(2). ''The conferees do not believe that U.S. shareholders should be able to obtain the deferral of U.S. tax on income attributable to insurance of risks of U.S. persons who are in turn insuring the risks of those shareholders. Accordingly, under the regulations, the income of the two companies in the example attributable to the insurance business described [in a cross-insurance arrangement] is to be treated as related person insurance income.'' *Id.* at II–621.

Regulatory activity on the 1991 proposed regulations was suspended in 1999 due to the temporary enactment of changes to the definition of insurance income under section 953 and the temporary enactment of section 954(i) (together, the ''Insurance Active Financing Exception''). *See* Unified Agenda, 64 FR 21831 (Apr. 26, 1999). These statutory changes were adopted on a permanent basis by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113 (Dec. 18, 2015). Although much of the 1991 proposed regulations requires modification to account for the Insurance Active Financing Exception, other provisions in the 1991 proposed regulations, including the cross-insurance rule, were not affected by the statutory changes.

V. Net Investment Income Tax

Section 1411 imposes a 3.8-percent tax on the net investment income of certain individuals, trusts, and estates. Under § 1.1411–10(g), an election can be made with respect to a CFC or PFIC that is a QEF to treat amounts included in income under section 951(a) or section 1293(a)(1)(A) with respect to the CFC or QEF as net investment income for purposes of § 1.1411–4(a)(1)(i), and to take amounts included in income under section 1293(a)(1)(B) into account for purposes of calculating the net gain attributable to dispositions of property under § 1.1411–4(a)(1)(iii). Pursuant to § 1.1411–10(g)(3), the election may be made by any individual, estate, trust, domestic partnership, S corporation, or common trust fund that owns the relevant CFC or QEF directly or indirectly through one or more foreign entities. In addition, if a domestic partnership, S corporation, estate, trust, or common trust fund that directly owns the CFC or QEF does not make the election, an individual, estate, trust, domestic partnership, S corporation, or common trust fund that owns the CFC or PFIC indirectly through the non-electing entity may itself make the election. § 1.1411–10(g)(3).

Explanation of Provisions

I. PFIC Rules

A. Definition of PFIC Shareholder

The Treasury Department and the IRS have concluded that, because domestic partnerships and S corporations should be treated as aggregates of their partners and shareholders, respectively, for purposes of the QEF and MTM rules (see parts I.B.1 and I.C.1 of this Explanation of Provisions), the definition of shareholder under § 1.1291–1(b)(7) should be updated to reflect aggregate treatment for purposes of the PFIC regime. Thus, under the proposed regulations, neither domestic partnerships nor S corporations are considered shareholders for purposes of making QEF or MTM elections, recognizing QEF inclusions or MTM amounts, making PFIC purging elections, or filing Forms 8621. Proposed §§ 1.1291–1(b)(7), 1.1295–1(j)(3), 1.1296–1(a)(4).

B. QEF Rules

1. Treatment of Pass-Through Entities for Purposes of Sections 1293 and 1295

Various comments in response to the 2019 proposed regulations addressed the treatment of domestic partnerships as aggregates of their partners for purposes of the QEF rules. Some comments requested that domestic partnerships continue to be treated as PFIC shareholders for purposes of making QEF elections and recognizing QEF inclusions based on administrability considerations (including reducing compliance burdens for small partners) and access to information. Other comments recommended an aggregate approach to QEFs, citing consistency with section 951, section 951A, and other aspects of the PFIC regime (specifically sections 1291, 1294, and 1297(d)). Additionally, comments recommended that, because QEF inclusions are taken into account in computing taxable income at the partner level, a partner should determine whether the QEF rules apply. One comment recommended a transition to an aggregate approach to QEFs with an alternative that would permit a domestic partnership to make a QEF election on behalf of its partners if permitted under the partnership agreement.

The Treasury Department and the IRS have concluded that it is more appropriate to treat domestic partnerships and S corporations as aggregates of their partners and shareholders, respectively, for purposes of sections 1293 and 1295. Aggregate treatment is consistent with the general treatment of partnerships for purposes of the PFIC regime under section 1298(a)(3) and aligns the QEF rules with the treatment of domestic partnerships and S corporations for purposes of the CFC overlap rule. It also provides partners and S corporation shareholders, the persons most affected by a QEF election, with the ability to decide whether to make the election. In addition, the new reporting by partnerships on Schedule K–2, ''Partners' Distributive Share Items—International,'' and Schedule K–3, ''Partner's Share of Income, Deductions, Credits, etc.—International'' is expected to facilitate a partner's ability to make the QEF election. The Treasury Department and the IRS are aware that in limited circumstances, as a result of certain nonconforming tax years between a partner and a partnership, the partner may be required to file its return on which it makes a QEF election (and includes its QEF inclusion) before the deadline for the partnership to provide it with Schedule K–3. In such a case, the Treasury Department and the IRS expect that a partner seeking to make a QEF election will make arrangements with the partnership to provide the partner with the necessary information in a timely fashion.

Accordingly, the proposed regulations provide that a partner or S corporation shareholder, rather than the domestic partnership or S corporation, respectively, makes a QEF election, and each electing partner or S corporation shareholder must notify the partnership or S corporation, respectively, of the election to assist the partnership or S corporation with information reporting and tracking basis in the QEF stock. Proposed § 1.1295–1(d)(2)(i)(A) and (d)(2)(ii)(A). Similarly, partners and S corporation shareholders include their

pro rata shares of ordinary earnings and net capital gain attributable to the QEF stock as if such shareholder owned its share of the QEF stock directly, and not as a share of the pass-through entity's income. *See* proposed § 1.1293–1(c)(1). Contrary to the current regulations, however, a QEF election made under proposed § 1.1295–1(d)(2)(i)(A) or (d)(2)(ii)(A) by a partner or S corporation shareholder with respect to PFIC stock held indirectly through a domestic partnership or S corporation applies to all stock of that PFIC owned by such partner or S corporation shareholder, even if owned outside of the partnership or S corporation.

In response to the comments' concerns regarding the administrability of partner-level QEF elections, the Treasury Department and the IRS request comments on whether final regulations should permit a domestic partnership- or S corporation-level QEF election on behalf of its partners or shareholders, respectively, in conjunction with the general rule requiring the partner or shareholder to make the election. Comments should specifically address (i) the legal mechanism by which the domestic partnership or S corporation would be delegated the ability to make a QEF election on behalf of its partners or shareholders; (ii) the standard of delegation that should be required, including whether delegation should be based on the partnership agreement or the S corporation's organizational documents, or some other instrument, and, if so, whether delegation should be explicit or implicit within the instrument; (iii) whether the domestic partnership or S corporation's election should be binding on all partners or shareholders, or only on certain partners or shareholders; (iv) if binding on all partners or shareholders, whether certain partners or shareholders should be allowed to opt out and whether an opt-out is consistent with the current rules; and (v) the timing, filing, and notification requirements that should apply to a domestic partnership- or S corporation-level QEF election, taking into account the possibility of nonconforming taxable years among the partners and partnership (or shareholders and S corporation) and the QEF.

2. Transfers of Stock to Domestic Pass-Through Entities

The current regulations include special rules that apply when stock of a PFIC subject to a QEF election is transferred to a domestic pass-through entity, depending on whether the transferee entity makes a QEF election with respect to the transferred PFIC. Under § 1.1293–1(c)(2)(i), if PFIC stock subject to a QEF election is transferred to a domestic pass-through entity of which the transferor is an interest holder, and the transferee pass-through entity makes a QEF election with respect to the PFIC, thereafter the transferor and other interest holders that become PFIC shareholders as a result of the transfer begin taking into account their pro rata shares of the pass-through entity's QEF inclusions. However, under § 1.1293–1(c)(2)(ii), if the transferee pass-through entity does not make a QEF election with respect to the transferred PFIC, the transferor-shareholder (but not other indirect shareholders resulting from the transfer) continues to be subject to QEF inclusions with respect to the PFIC.

To provide consistency with the aggregate treatment of domestic partnerships and S corporations under the QEF rules, the proposed regulations provide that, if a shareholder transfers stock of a PFIC with respect to which it has made a QEF election to a pass-through entity, the transferor continues to be subject to QEF inclusions with respect to the transferred stock, and the other interest holders of the pass-through entity are subject to QEF inclusions from the PFIC only if they make a QEF election with respect to the transferred stock. Proposed § 1.1293–1(c)(3)(i) and (ii). However, because domestic nongrantor trusts continue to be shareholders for purposes of the QEF rules, the proposed regulations retain the rule in current § 1.1293–1(c)(2)(i) but limit its application to domestic nongrantor trusts. Therefore, if stock of a PFIC subject to a QEF election is transferred to a domestic nongrantor trust, and the transferee trust makes a QEF election with respect to the stock, the electing trust includes its pro rata share of the QEF inclusions, and its beneficiaries account for such amounts according to the general rules applicable to inclusions of income from the trust. *See* proposed § 1.1293–1(c)(3)(iii). If the domestic nongrantor trust does not make a QEF election with respect to the transferred stock, only the transferor is subject to QEF inclusions with respect to the transferred stock. *Id.*

3. Continuation of Preexisting QEF Elections

The Treasury Department and the IRS have concluded that QEF elections made by a domestic partnership or S corporation that are effective for taxable years of a PFIC ending on or before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** (such PFIC a ''preexisting QEF,'' and the election, a ''preexisting QEF election'') will continue for any partner or S corporation shareholder owning an interest in a preexisting QEF on that date. *See* proposed § 1.1295–1(d)(2)(i)(B), (d)(2)(ii)(B), and (f)(3). Treating the preexisting QEF elections as if they were effectively made by each partner or S corporation shareholder owning an interest in the preexisting QEF before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** should minimize the number of additional QEF elections required by partners and S corporation shareholders, thus making the QEF rules more administrable for taxpayers and the IRS when transitioning from the historic entity approach to the aggregate approach of the proposed regulations. However, although a new election is not required to be made with respect to a preexisting QEF by partners or S corporation shareholders that indirectly owned the QEF before the finalization of the proposed regulations, they are subject to QEF inclusions under the new aggregate approach. *See* proposed § 1.1293–1(c)(1).

4. Additional Changes to QEF Rules

The proposed regulations make several modifications to the rules that characterize stock held through a pass-through entity under § 1.1295–1(b)(3)(iv). First, consistent with the general aggregate approach to domestic pass-through entities under the QEF rules (other than domestic nongrantor trusts and domestic estates), the rule now governs how stock of a PFIC will be treated as stock of a pedigreed QEF to a shareholder, as defined in proposed § 1.1295–1(j)(3), rather than all interest holders or beneficiaries of a pass-through entity as under the current provision. This paragraph is also modified to address both the treatment of PFICs as pedigreed QEFs to shareholders owning such PFICs through domestic partnerships and S corporations that have made preexisting QEF elections, and the treatment of PFICs owned through domestic pass-through entities (other than domestic nongrantor trusts and domestic estates) to shareholders making the QEF election. Further, the rule addresses the treatment of PFICs as pedigreed QEFs when PFIC stock is acquired by, or transferred to, pass-through entities. *See* proposed § 1.1295–1(b)(3)(iv)(A) through (C). Additionally, in order to ensure the proper application of proposed § 1.1295–1(b)(3)(iv), proposed § 1.1295–1(b)(3)(iv)(A) and (B) do not

apply to transactions in which gain is not fully recognized.

The proposed regulations also make several changes to conform § 1.1295–1 to the general aggregate treatment of domestic pass-through entities (other than domestic non-grantor trusts and domestic estates) under the QEF rules. These changes include (i) limiting the application of paragraphs (b)(3)(i) and (ii) to domestic nongrantor trusts and domestic estates, which are the only domestic pass-through entities that may make a QEF election under the proposed regulations; (ii) applying the partnership termination rule only with respect to partnerships that have made preexisting QEF elections and their partners; (iii) revising rules governing the treatment of PFIC stock distributed by a partnership as stock of a pedigreed QEF to transferee partners; and (iv) providing that shareholders owning QEF stock through a domestic partnership or S corporation that has made a preexisting QEF election are required to file Form 8621 for such QEFs. Proposed § 1.1295–1(b)(3)(i) through (iii) and (v) and (f)(2)(i). In addition, the proposed regulations remove the rule in § 1.1295–1(i)(1)(ii) that allows the Commissioner to invalidate a pass-through entity QEF election with respect to a shareholder if, as a result of nonconforming taxable years between the shareholder and a pass-through entity, the QEF inclusion is not included in income within two years of the PFIC's year end. The rule was removed because it specifically applies to pass-through entity QEF elections and inclusions, which, as a result of aggregate treatment, generally will only be relevant in limited circumstances involving domestic trusts. The Commissioner continues to have discretion to invalidate or terminate a shareholder's QEF election in appropriate circumstances if the requirements of section 1295 are not met by a shareholder, an intermediary, or the relevant PFIC. § 1.1295–1(i)(1)(i).

C. MTM Rules

1. Treatment of Pass-Through Entities for Purposes of Section 1296

The Treasury Department and the IRS received comments addressing the treatment of domestic partnerships as aggregates of their partners for purposes of the MTM rules, which generally were similar to the comments received with respect to QEFs. For reasons similar to those noted for QEFs, some comments recommended maintaining entity treatment of domestic partnerships under the MTM rules for administrability reasons, such as reduced compliance burdens for small partners and limited access to information. Other comments recommended an aggregate approach to maintain consistency with sections 951 and 951A and the PFIC regime (including the comments' proposed aggregate treatment of domestic partnerships for the QEF rules) and to allow the persons most affected by a MTM election, the partners, to determine whether the MTM rules apply. The comment discussed in part I.B.1 of this Explanation of Provisions that recommended an alternative that would permit a domestic partnership to make a QEF election on behalf of its partners made the same recommendation with respect to MTM elections.

For the reasons noted by the comments recommending an aggregate approach and to further consistency in the treatment of domestic partnerships and S corporations across the PFIC regime, the Treasury Department and the IRS have concluded that domestic partnerships and S corporations should also be treated as aggregates of their partners and shareholders, respectively, for purposes of the MTM rules. Accordingly, the proposed regulations extend aggregate treatment to domestic partnerships and S corporations for purposes of the MTM rules by providing that the MTM rules apply to PFIC shareholders, as defined in proposed § 1.1291–1(b)(7), which term does not include domestic partnerships or S corporations. *See* proposed § 1.1296–1(a)(4) and (e). As a result, partners of a domestic partnership or S corporation shareholders make an MTM election with respect to PFIC stock owned through the partnership or S corporation and determine their own MTM gain or loss, rather than taking into account their distributive share of the domestic partnership or S corporation's MTM gain or loss. *See* proposed § 1.1296–1(b)(1) and (c)(1) and (3). Partners and S corporation shareholders making an MTM election with respect to a PFIC held through a partnership or S corporation, respectively, must notify the partnership or S corporation of the election to assist the partnership or S corporation with information reporting and tracking basis in the PFIC stock. Proposed § 1.1296–1(h)(1)(i)(B). Incorporating the proposed § 1.1291–1(b)(7) definition of shareholder into § 1.1296–1 also clarifies that the MTM rules apply to grantors of domestic grantor trusts that own PFIC stock, and that domestic nongrantor trusts and domestic estates continue to be treated as entities for purposes of the MTM rules.

To reflect the transition to the aggregate treatment of domestic partnerships and S corporations for purposes of the MTM rules, various other conforming changes are made to apply the MTM rules to PFIC shareholders rather than U.S. persons. *See* proposed § 1.1296–1(b)(2) and (3); § 1.1296–1(c)(5); § 1.1296–1(d)(1) and (2); § 1.1296–1(e) and (f); § 1.1296–1(g)(1) and (2); § 1.1296–1(h)(1)(i) and (ii); § 1.1296–1(h)(2)(ii); § 1.1296–1(h)(3); and § 1.1296–1(i)(1). Additionally, the rule in § 1.1296–1(g)(3), providing that when an MTM PFIC is owned through certain foreign pass-through entities any MTM gain or loss is determined as of the end of the foreign pass-through entity's tax year, has been removed. Under the general aggregate treatment of pass-through entities (besides domestic nongrantor trusts and domestic estates) for purposes of the MTM rules, the appropriate taxable year with respect to which any MTM gain or loss is determined is the taxable year end of the shareholder that owns the MTM PFIC through a pass-through entity, not the pass-through entity's taxable year.

As in part I.B.1 of this Explanation of Provisions, the Treasury Department and the IRS request comments on whether a form of partnership- or S corporation-level MTM election could be accommodated in final regulations. Comments should address the same considerations noted in part I.B.1 of this Explanation of Provisions regarding the delegation of authority to make an MTM election to a domestic partnership or S corporation.

2. Continuation of Preexisting MTM Elections

The Treasury Department and the IRS have concluded that MTM elections made with respect to a PFIC by a domestic partnership or S corporation for taxable years of the PFIC ending on or before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** (''preexisting MTM election'') should be treated as made by any partner or S corporation shareholder owning its interest on that date. This treatment should minimize the number of additional MTM elections that would be made by such partners or S corporation shareholders, thus making the MTM rules more administrable for taxpayers and the IRS as a result of the transition from the historic entity approach to the aggregate approach of the proposed regulations. Accordingly, MTM elections made by domestic

partnerships and S corporations effective for taxable years of a PFIC ending on or before finalization of the proposed regulations under proposed § 1.1296–1(h)(1)(i)(A) continue to be valid and will be treated as made by the owners of such entities. As a result, going forward the owners of those entities will determine their MTM gain or loss as if they held the section 1296 stock directly.

3. Modifications to the MTM Coordination Rule

Under section 1296(j) and § 1.1296–1(i), if a taxpayer makes an MTM election with respect to a foreign corporation that was a PFIC (other than a QEF) before the first taxable year to which the MTM election was effective, the excess distribution rules apply to any (i) distributions by the PFIC with respect to the section 1296 stock; (ii) disposition of the section 1296 stock; and (iii) MTM gain recognized on the last day of the U.S. person's taxable year (the ''MTM coordination rule''). Before the proposed regulations, if section 1296 stock subject to the MTM coordination rule was held by a domestic partnership or S corporation, it may have been unclear how to apply the MTM coordination rule since the excess distribution rules are not applied at the domestic partnership or S corporation level.

Accordingly, to conform to the general transition to an aggregate approach under the MTM rules, the proposed regulations clarify that the MTM coordination rule is applied to a PFIC shareholder. *See* proposed § 1.1296–1(i)(2) introductory text and (i)(2)(ii). To coordinate with MTM rules other than those under section 1296, the proposed regulations also modify § 1.1291–1(c)(4)(ii) so that computations apply to PFIC shareholders.

D. CFC Overlap Rule

1. Application Based on Aggregate Treatment for Sections 951 and 951A

The CFC overlap rule provides that, for purposes of the PFIC regime, a corporation is not treated as a PFIC with respect to a shareholder during the qualified portion of the shareholder's holding period with respect to stock in the corporation. Section 1297(d)(1). Thus, this rule applies separately with respect to each shareholder of the foreign corporation, and the foreign corporation may be a PFIC with respect to one shareholder but not another. The CFC overlap rule was intended to eliminate the simultaneous application of the subpart F and PFIC regimes only for a shareholder that is ''subject to current inclusion under the subpart F rules.'' H.R. Rep. 105–148 at 534.

Under the final regulations (and § 1.951A–1(e) as applicable before the final regulations), domestic partnerships and S corporations do not have inclusions under section 951 or section 951A and, because the inclusions are instead determined directly and solely by the partners or S corporation shareholders that are U.S. shareholders, partners and S corporation shareholders that are not U.S. shareholders do not have section 951 or section 951A inclusions. *See* § 1.958–1(d)(1). Thus, a U.S. person that is not a U.S. shareholder of a foreign corporation that would otherwise be a PFIC with respect to that person if held directly should not be permitted to rely on the CFC overlap rule to avoid the PFIC regime simply because the U.S. person owns its interest in the foreign corporation indirectly through a domestic partnership or S corporation.

Although section 1297(d) does not define the term ''shareholder'' for this purpose, under § 1.1291–1(b)(7), a domestic partnership or S corporation is not a shareholder to which the CFC overlap rule applies.[2] Thus, this regulation sets forth an exception to the general rule in section 1298(a)(1)(B), which provides that a U.S. person is not treated as constructively owning stock that is owned by another U.S. person (including, for example, a domestic partnership). Accordingly, under the general rule of section 1298(a)(1)(A), constructive ownership of PFIC stock under section 1298(a) applies to the extent that the effect is to treat PFIC stock held by a domestic partnership or S corporation as owned by partners and shareholders of the entities that are U.S. persons. The ownership provisions of section 1298(a), in turn, apply for purposes of sections 1291 through 1298, including section 1297(d). Thus, neither a domestic partnership nor an S corporation is a shareholder for purposes of section 1297(d) by operation of § 1.1291–1(b)(7), notwithstanding that, under § 1.958–1(d)(2)(i), a domestic partnership or an S corporation may be a U.S. shareholder of the foreign corporation within the meaning of section 951(b). Consistent with this aggregate approach to section 951 and section 951A in applying the CFC overlap rule under the existing regulations, the proposed regulations confirm that for purposes of section 1297(d), the term ''qualified portion'' does not include any portion of a domestic partner or S corporation shareholder's holding period during which the partner or shareholder was not a U.S. shareholder with respect to the CFC/PFIC. Proposed § 1.1291–1(c)(5)(i).

2. Transition Rule for Entity Treatment

Although the CFC overlap rule, in conjunction with the shareholder definition in § 1.1291–1(b)(7), properly reflects the aggregate approach to subpart F (as discussed in part III.A of this Explanation of Provisions), the Treasury Department and the IRS have determined that the application of these rules could lead to inappropriate results under the entity approach to subpart F that applied under prior law. In particular, under entity treatment for subpart F, the CFC overlap rule would not apply with respect to partners or S corporation shareholders of the CFC/PFIC that were not U.S. shareholders even though they would take into account their share of inclusions of the domestic partnership or S corporation under section 951 and, as applicable, section 951A. Thus, the CFC/PFIC would be treated as a PFIC with respect to such partners or S corporation shareholders even though the partner or shareholder was subject to current inclusions under the subpart F regime.

Accordingly, the Treasury Department and the IRS have determined that it is appropriate to provide a transition rule that would apply to taxable years of shareholders beginning before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, or for taxable years of shareholders of an S corporation in which the S corporation elects to apply § 1.958–1(e). When this transition rule applies, the CFC overlap rule will benefit certain persons that are indirect PFIC shareholders, but not U.S. shareholders, due to owning stock of foreign corporations through domestic partnerships or S corporations, during periods when the shareholder was subject to current inclusions under section 951 or section 951A (for example, under the rules described in Notices 2019–46 and 2020–69) as a

[2] Section 1.1291–1(b)(7) provides that a PFIC shareholder is a U.S. person that directly owns PFIC stock or that is an indirect shareholder under § 1.1291–1(b)(8); further, it states that for purposes of sections 1291 and 1298, neither a domestic partnership nor an S corporation is treated as a PFIC shareholder, except for information reporting purposes. This definition of shareholder was first adopted as a temporary regulation, applicable to taxable years of shareholders ending on or after December 31, 2013 (T.D. 9650, 78 FR 79602, 79608 (Dec. 31, 2013)) and was subsequently issued as a final regulation without substantive change with the same applicability date (T.D. 9806, 81 FR 95459, 95465 (Dec. 28, 2016)). Both temporary and final § 1.1291–1(b)(7) were issued after several private letter rulings (''PLRs''), such as PLR 201108020 (Feb. 25, 2011) and PLR 200943004 (Oct. 23, 2009), which were issued with respect to the application of section 1297(d) to domestic partnerships.

share of a domestic partnership or S corporation's income inclusions. Proposed § 1.1291–1(c)(5)(ii).

E. PFIC Purging Elections

Under the current regulations, it may be unclear whether a domestic partnership or an S corporation that owns PFIC stock is eligible to make a PFIC purging election, particularly with respect to the section 1291 purging elections, both of which require simultaneous QEF elections that are generally made by domestic partnerships and S corporations.

Consistent with the aggregate treatment of domestic partnerships and S corporations for purposes of making elections and determining income inclusions within the PFIC regime, the Treasury Department and the IRS have determined that the PFIC purging elections with respect to PFICs owned by partnerships and S corporations should be made at the partner or shareholder level because each of the PFIC purging elections can result in the recognition of excess distributions under section 1291, and those inclusions are directly taken into account at the partner or shareholder level and rely on partner or shareholder specific tax attributes, such as holding period. Each PFIC purging election is made by a shareholder as defined in proposed § 1.1291–1(b)(7), which has been modified to make explicit that neither domestic partnerships nor S corporations are PFIC shareholders for any purpose. As a result, under the proposed regulations, PFIC purging elections are made at the partner or S corporation shareholder level.

F. PFIC Information Reporting

Consistent with the aggregate treatment of domestic partnerships and S corporations for purposes of the QEF and MTM rules, the Treasury Department and the IRS have concluded that domestic partnerships and S corporations should no longer be required to file an annual report (Form 8621) under section 1298(f) and § 1.1298–1. The requirement to file Form 8621 applies only to PFIC shareholders within the meaning of § 1.1291–1(b)(7), which includes, for example, partners or S corporation shareholders that indirectly own PFICs through domestic partnerships or S corporations. § 1.1298–1(a). Domestic partnerships and S corporations will not be subject to this filing obligation due to the revised definition of shareholder in proposed § 1.1291–1(b)(7), under which domestic partnerships and S corporations are not PFIC shareholders for any purpose.

To reflect this change, proposed § 1.1298–1(b)(1) revises the general rule requiring a PFIC shareholder to file Form 8621 to clarify that the requirement applies to PFIC shareholders as defined in § 1.1291–1(b)(7). Additionally, proposed § 1.1298–1(b)(1)(i) and (ii) provides that the general rule concerning who has to file Form 8621 with respect to a PFIC applies to a PFIC shareholder that is either (i) a direct PFIC shareholder or (ii) an indirect PFIC shareholder (within the meaning of § 1.1291–1(b)(8)) that holds an interest in a PFIC through one or more entities, each of which is not a PFIC shareholder within the meaning of § 1.1291–1(b)(7). As a result, because a domestic grantor trust is not a PFIC shareholder within the meaning of § 1.1291–1(b)(7), the proposed regulations remove § 1.1298–1(b)(1)(iii). Similarly, the proposed regulations remove § 1.1298–1(c)(6) because domestic partnerships are not PFIC shareholders under proposed § 1.1291–1(b)(7) and thus have no filing obligation under the proposed regulations.

These changes limit the application of § 1.1298–1(b)(2) (which currently requires certain indirect shareholders to file Form 8621 when those shareholders own an interest in a PFIC through one or more U.S. persons) to only beneficiaries of domestic estates and domestic nongrantor trusts, because an indirect PFIC shareholder owning stock in a PFIC through a domestic partnership, S corporation, or domestic grantor trust will be required to file a Form 8621 under proposed § 1.1298–1(b)(1)(ii). An indirect PFIC shareholder owning stock of a PFIC by reason of an interest in a domestic estate or domestic nongrantor trust that recognizes its share of the estate or trust's QEF inclusions or MTM amounts would continue to be able to rely on the exception of § 1.1298–1(b)(2)(ii) if the domestic estate or domestic nongrantor trust files Form 8621 with respect to the QEF or MTM PFIC. The proposed regulations remove the last sentence of § 1.1298–1(b)(2)(ii) regarding the inability to apply the exception with respect to stock in a QEF contributed to domestic partnerships or S corporations, because these entities cannot make a QEF election under the proposed regulations.

The changes to the section 1298(f) information reporting requirements in proposed § 1.1298–1 reflect the general shift in the treatment of domestic partnerships and S corporations as aggregates for purposes of the PFIC regime. While these changes represent a change in the PFIC shareholders required to file an annual report under section 1298(f), a domestic partnership or S corporation will continue to have a responsibility to report information with respect to the PFICs it owns to its interest holders on Schedule K–3, ''Partner's Share of Income, Deductions, Credits, etc.—International,'' of Forms 1065, ''U.S. Return of Partnership Income,'' and 1120–S, ''U.S. Income Tax Return for an S Corporation,'' respectively, when required. The general information reporting obligations of domestic partnerships and S corporations with respect to their interest holders should result in the interest holders receiving the information required to satisfy their filing obligations under section 1298(f).

G. Other Changes

1. Section 1297(e) PFICs

The term ''section 1297(e) PFIC'' and other associated references to ''section 1297(e)'' related to section 1297(e) before it was re-designated as current section 1297(d) by the Tax Technical Corrections Act of 2007. Accordingly, the proposed regulations change the defined term ''section 1297(e) PFIC'' to ''section 1297(d) PFIC'' and replace references to ''section 1297(e) PFICs'' and ''section 1297(e)(2)'' with references to ''section 1297(d) PFICs'' and ''section 1297(d)(2),'' respectively.

2. Changes to Definition of Post-1986 Earnings and Profits

The term ''post-1986 earnings and profits'' is the basis upon which a deemed dividend under §§ 1.1291–9, 1.1297–3, and 1.1298–3 is determined, and each of those sections generally defines the term by reference to the definition of ''undistributed earnings, within the meaning of section 902(c).'' However, because section 902 was repealed by the Tax Cuts and Jobs Act, Public Law 115–97, December 22, 2017, 131 Stat 2054 (''TCJA''), the proposed regulations revise the definition of post-1986 earnings and profits in §§ 1.1291–9(a)(2)(i), 1.1297–3(c)(3)(i)(A), and 1.1298–3(c)(3)(i) to eliminate references to section 902(c) and to define the term by reference to earnings and profits computed in accordance with sections 964(a) and 986.

II. Subpart F Rules

A. Modifications to § 1.964–1(c), Including Determination of Controlling Domestic Shareholders

As discussed in part IV.A of the Background section of this preamble, the final regulations do not extend aggregate treatment for purposes of determining controlling domestic

shareholders of foreign corporations. Nevertheless, the Treasury Department and the IRS have further considered the benefits of maintaining entity treatment of domestic partnerships for purposes of determining the controlling domestic shareholders of a CFC, including the administrative convenience of centralizing the various actions taken by controlling domestic shareholders, and have concluded that such actions should generally be taken by those persons whose tax liability is directly affected thereby. Accordingly, the Treasury Department and the IRS have concluded that domestic partnerships should be treated as aggregates for purposes of determining whether a U.S. shareholder is a controlling domestic shareholder of a CFC. This approach is consistent with the final regulations, which provide that neither section 951 nor section 951A inclusions arise at the U.S. shareholder partnership level but instead arise directly to U.S. shareholder partners. In other words, actions that affect the determination of inclusions under sections 951 and 951A are determined by the same persons that have the direct inclusions under those provisions.

Accordingly, proposed § 1.958–1(d)(1) provides that domestic partnerships are not considered to own stock of a foreign corporation under section 958(a) for purposes of § 1.964–1(c) as well as any provision that specifically applies by reference to § 1.964–1(c). As a result, domestic partnerships and S corporations (by virtue of section 1373(a)) would be treated as aggregates of their partners and shareholders, respectively, for purposes of determining the controlling domestic shareholders of foreign corporations under the proposed regulations.

In addition to applying for purposes of determining the controlling domestic shareholders of a foreign corporation, aggregate treatment also generally applies for purposes of the notice requirement of § 1.964–1(c)(3)(iii). Extending aggregate treatment to this notice requirement ensures that other persons known by the controlling domestic shareholders to be U.S. persons that own (within the meaning of section 958(a)) stock of a foreign corporation (''domestic shareholders'') through a domestic partnership (but that are not themselves controlling domestic shareholders) are made aware of any action undertaken by the controlling domestic shareholders under § 1.964–1(c)(3). However, proposed § 1.964–1(c)(3)(iii)(B) provides that a controlling domestic shareholder is deemed to satisfy the notice requirement with respect to domestic shareholders that are partners in a domestic partnership by providing the notice to the domestic partnership (known to the controlling domestic shareholder) through which the domestic shareholders own stock of the foreign corporation, which could then provide the notice to its partners that are domestic shareholders. Additionally, to help facilitate notice to the person that prepares and maintains the foreign corporation's books and records for U.S. federal income tax purposes, notice is also required to be provided to any U.S. person (such as a domestic partnership) that controls, within the meaning of section 6038(e), the foreign corporation (in other words, any U.S. person that is a Category 4 filer of Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations,'' with respect to the foreign corporation).

Additionally, in light of the repeal of section 902 as part of the TCJA, the proposed regulations replace the term ''noncontrolled section 902 corporation'' in § 1.964–1(c)(5)(ii) with the term ''noncontrolled foreign corporation,'' which is defined as any foreign corporation (other than a CFC as defined in section 957 or section 953) as to which a U.S. shareholder owns stock within the meaning of section 958(a). Proposed § 1.964–1(c)(5)(ii). The proposed regulations similarly replace the term ''majority domestic corporate shareholders'' with the term ''majority domestic shareholders,'' to reflect the repeal of section 902. *Id.*

B. Treatment of S Corporations With AE&P

After the issuance of Notice 2020–69 (announcing an intent to issue regulations adopting the S corporation transition approach), a comment requested additional guidance on issues applicable to S corporations under sections 951 and 951A. Specifically, the comment requested (i) transition rules for taxpayers that elected into the S corporation transition approach; (ii) guidance on the aggregate treatment of S corporations for purposes of sections 951 and 951A; and (iii) the ability of all S corporations to elect entity treatment similar to the S corporation transition approach described in Notice 2020–69, regardless of whether the S corporation has AE&P.[3]

The proposed regulations adopt the S corporation transition approach, as described in Notice 2020–69. *See* proposed § 1.958–1(e). The Treasury Department and the IRS have concluded that the S corporation transition approach in the proposed regulations appropriately smooths the transition for S corporations to be on an equal footing with domestic partnerships. The S corporation transition approach ensures that amounts corresponding to income of a CFC already taxed to S corporation shareholders can, even without being distributed by the CFC, be distributed tax-free by the S corporation and have priority over distributions of C corporation AE&P, while the latter will continue to be taxed as dividends when distributed, consistent with section 1368. Because section 951 and section 951A inclusions at the entity level will generate AAA, S corporations with AE&P will be able to make distributions to shareholders with respect to those amounts rather than distributions of dividends out of AE&P.

The proposed regulations do not extend the S corporation transition approach to all S corporations, regardless of AE&P. The Treasury Department and the IRS believe that permitting all S corporations to elect to be treated as an entity for purposes of sections 951 and 951A is inconsistent with section 1373(a) and the aggregate approach adopted in the final section 951A regulations and the final regulations. Further, the Treasury Department and the IRS have determined that, in recognition of certain issues specific to S corporations with AE&P as of a certain date, the S corporation transition approach, with its conditions, sufficiently transitions those S corporations that elect entity treatment to the aggregate treatment provided in the final section 951A regulations and the final regulations. Accordingly, this comment is not adopted.

C. Entity Treatment Under Section 951A and Inapplicability of Penalties

The proposed regulations include the rules announced in Notice 2019–46 that permit domestic partnerships and S

[3] This comment also requested guidance to (i) clarify the determination of a partner's proportionate share of CFC stock in accordance with the allocation of tested items under section 951A to a U.S. shareholder that owns stock in a CFC through an interest in a partnership and (ii) provide rules on the allocation of tested items under section 951A and on the maintenance of previously-taxed earnings and profits (''PTEP'') accounts. The long-standing issues of measuring a partner's proportionate share of income under subpart F as well as the treatment of targeted capital accounts are outside the scope of these proposed regulations and therefore are not addressed. With respect to the request for guidance related to PTEP, the Treasury Department and the IRS intend to separately address certain issues pertaining to partnerships and S corporations. In particular, this guidance will include rules to address the transition of S corporations from entity treatment to aggregate treatment as noted in section 3.04 of Notice 2020–69.

corporations to apply the hybrid approach for taxable years ending before June 22, 2019. Consistent with Notice 2019–46, to apply the hybrid approach, domestic partnerships and S corporations must satisfy certain notice requirements. Proposed § 1.951A–1(e)(2)(i) and (iii). In addition, if the domestic partnership or S corporation satisfies these notification requirements it will not be subject to certain penalties for failures to file or furnish statements to the extent such failures arise from acting consistently with the 2018 proposed regulations before June 22, 2019. Proposed § 1.951A–1(e)(2)(ii).

D. Related Person Insurance Income

1. Aggregate Treatment of Partnerships

A comment in response to the 2019 proposed regulations requested that aggregate treatment be applied to domestic partnerships for purposes of determining RPII and that domestic partnerships be treated the same way as foreign partnerships for this purpose. In addition, the Treasury Department and the IRS recognize that treating a domestic partnership as an entity for purposes of section 953(c) could produce disproportionate RPII inclusions in light of the special rules contained in section 953(c)(5). Therefore, proposed § 1.958–1(d)(1) modifies the list of provisions subject to aggregate treatment to include section 953(c), and a domestic partnership is not treated as a RPII U.S. shareholder for the purpose of characterizing income as RPII. The proposed regulations, however, provide that § 1.958–1(d)(1) does not apply for purposes of section 953(c)(1)(A) in determining whether any foreign corporation is a controlled foreign corporation as defined in section 953(c)(1)(B), 953(c)(3)(E), or 953(d)(1)(A). Proposed § 1.958–1(d)(2)(v). This approach is consistent with § 1.958–1(d)(2)(ii) (providing that § 1.958–1(d)(1) does not apply for purposes of determining whether a foreign corporation is a controlled foreign corporation as defined in section 957).

Corresponding changes are made to the definition of RPII under proposed § 1.953–3 to conform with the aggregate treatment of partnerships under proposed § 1.958–1(d)(1). RPII is generally defined as premium and investment income attributable to an annuity, insurance, or reinsurance policy that directly or indirectly provides coverage to a related insured. Proposed § 1.953–3(b)(1)(i). The new definition of RPII is modeled on the 1991 proposed regulations but has been modified to account for the aggregate treatment of partnerships and the Insurance Active Financing Exception. Section 1.953–3(b)(1) of the 1991 proposed regulations is withdrawn.

A related insured is defined to include a RPII U.S. shareholder or a person related to a RPII U.S. shareholder. Proposed § 1.953–3(b)(1)(ii)(A) and (B). In addition, if a related insured indirectly owns stock in a RPII CFC through a partnership, the partnership is treated as a related insured. Proposed § 1.953–3(b)(1)(ii)(C). This rule applies to foreign and domestic partnerships (other than publicly traded partnerships) and to S corporations.

Proposed § 1.953–3(b)(1)(ii)(D) also provides that a person (other than a publicly traded corporation or partnership) is treated as a related insured if it is more than 50 percent owned (directly, indirectly, or constructively) by RPII U.S. shareholders. This rule is intended to prevent the avoidance of RPII when the insured is held by multiple RPII U.S. shareholders (or their affiliates) and is issued pursuant to the authority granted in section 953(c)(8)(A). The Treasury Department and the IRS request comments on whether the final regulations should include a rule under which a U.S. person that holds an option to acquire stock (or another non-stock interest) in a RPII CFC also should be treated as a related insured.

The term ''related insured'' describes those persons who, if insured, would cause a RPII CFC's income to be characterized as RPII. A person who is not actually insured by a RPII CFC can meet the definition of a related insured for purposes of the proposed regulations (though a RPII CFC's income will not be characterized as RPII unless it is attributable to a policy that provides coverage to a related insured). No inference is intended concerning the standard for determining whether a person is characterized as being insured for other tax purposes.

When a partnership is insured by a RPII CFC, the amount of RPII is determined based on the portion of the premium that is allocated to related insureds (other than partnerships or S corporations). Proposed § 1.953–3(b)(1)(iii). In the case of tiered partnerships, the proposed regulations take into account the portion of the premium that is allocated to a partner who indirectly owns a partnership through one or more upper-tier partnerships. The proposed regulations provide that the premium allocated to the relevant partner is determined based on the partnership agreement and section 704(b). Proposed § 1.953–3(b)(1)(iii)(C)(*1*). The Treasury Department and the IRS are also considering whether, solely for purposes of determining the amount of RPII, another method of allocating the premium payments should be required under the authority provided in section 953(c)(8). One potential method includes allocating the premium payments in proportion to each partner's nonseparately stated share of partnership income or loss. Comments are requested on whether this or another alternative would be more appropriate.

The Treasury Department and the IRS request comments on the appropriate application of aggregate principles to RPII. The Treasury Department and the IRS also are considering revising forms and instructions to facilitate information sharing and reporting between RPII U.S. shareholders, RPII CFCs, and partnerships and request comments in this regard.

2. Cross-Insurance Rule

The Treasury Department and IRS are aware of abusive marketed offshore captive insurance arrangements that, notwithstanding the directive in section 953(c)(8)(A) and legislative history described in part IV.C of the Background section of this preamble and the 1991 proposed regulations, attempt to avoid the RPII rules through the use of cross-insurance. Consistent with the Congressional directive, the proposed regulations contain a special rule to address cross-insurance arrangements, which replaces the cross-insurance rule contained in the 1991 proposed regulations. Proposed § 1.953–3(b)(5) provides that insurance income is treated as RPII if it is attributable to an arrangement in which a RPII CFC insures a person that is not a related insured and, as part of the same arrangement, another person insures a related insured of the RPII CFC. This rule applies to direct or indirect arrangements involving two or more insurance companies, and also covers other arrangements with a similar degree of cooperative risk sharing and applies regardless of whether the shareholders of each RPII CFC are engaged in a similar line of business. Section 1.953–3(b)(5) of the 1991 proposed regulations is withdrawn.

The Treasury Department and the IRS request comments with respect to other parts of the 1991 proposed regulations relating to RPII, including whether other parts should be reproposed, such as the exception for indirect ownership through publicly traded corporations under § 1.953–3(b)(2)(iii) of the 1991 proposed regulations.

III. Net Investment Income Tax

As discussed in part V of the Background section of this preamble, a domestic partnership or S corporation that directly or indirectly (through one or more foreign entities) owns a CFC or QEF may make an election under § 1.1411–10(g) with respect to the CFC or QEF, and certain persons that own a CFC or QEF indirectly through a domestic partnership or S corporation may also make such an election, but only if the domestic partnership or S corporation does not make the election.

Consistent with the transition to aggregate treatment and provisions in this rulemaking requiring QEF elections to be made (and QEF inclusions to arise) at the partner or S corporation shareholder level, the Treasury Department and the IRS have determined that elections under § 1.1411–10(g) should no longer be permitted to be made by a domestic pass-through entity, but instead should be made only by an individual, estate, or trust that holds the CFC or QEF indirectly through the domestic pass-through entity. This rule permits the election to be made solely by the person whose tax liability is directly affected by the election. Accordingly, proposed § 1.1411–10(g)(3)(i) generally requires the election to be made by an individual, estate, or trust that indirectly holds the relevant CFC or QEF indirectly through a partnership or S corporation. However, for taxable years that an S corporation elects to be treated as an entity under proposed § 1.958–1(e), the S corporation may make the election under § 1.1411–10(g) with respect to CFCs it owns, directly or indirectly; if the S corporation does not make the election under § 1.1411–10(g), its shareholders that are individuals, estates, or trusts may make it instead. Proposed § 1.1411–10(g)(3)(ii).

The proposed regulations also remove § 1.1411–10(g)(2)(iii), which provided rules applicable when a partnership terminated under section 708(b)(1)(B), because section 708(b)(1)(B) was repealed as part of the TCJA.

Finally, the Treasury Department and the IRS are considering providing additional guidance (perhaps in the finalization of these proposed regulations) under section 1411 on the calculation of net gain for indirect shareholders when, for example, PFIC stock is sold by a foreign partnership through which the indirect shareholder owns the PFIC stock in a year after the indirect shareholder includes MTM gain. *Compare* section 1296(b)(1)(A) (providing an increase to the basis of PFIC stock held by a direct shareholder), *with* section 1296(b)(2)(A) and proposed § 1.1296–1(d)(2)(i) (providing, for purposes of chapter 1 of the Code, an increase to the basis of PFIC stock indirectly held). In light of this difference in wording, and the placement of section 1411 in chapter 2A of the Code, the question arises whether net gain under section 1411 could be overstated. *But see* section 1411(c)(1)(A)(iii) and § 1.1411–4(a)(1)(iii) (providing that net investment income includes net gain attributable to the disposition of property but only ''to the extent taken into account in computing taxable income.'') Comments are requested on this issue.

IV. Applicability Dates

A. In General

The regulations under sections 964, 1291, 1293, 1295, 1296, 1298, and 1411 and § 1.958–1(d) are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

B. Entity Treatment of Certain Domestic Partnerships and S Corporations

With respect to the rules relating to domestic partnerships and S corporations that applied the hybrid approach to determining section 951A inclusions contained in previously proposed § 1.951A–5 (83 FR 51072, 51101–51104), proposed § 1.951A–1(e)(2) is proposed to apply to taxable years of foreign corporations ending before June 22, 2019, and to taxable years of U.S. shareholders in which or with which such taxable years end. Taxpayers may continue to rely on Notice 2019–46 until these regulations are finalized.

C. Elective Entity Treatment for Certain S Corporations

With respect to the rules relating to S corporations with AE&P, proposed § 1.958–1(e) is proposed to apply to taxable years of S corporations ending on after September 1, 2020. However, taxpayers may rely on proposed § 1.958–1(e) for taxable years of S corporations ending on or after June 22, 2019, and ending before September 1, 2020, provided that the S corporation and its shareholders that are U.S. shareholders consistently apply those rules with respect to all CFCs whose stock the S corporation owns with the meaning of section 958(a).

D. RPII Provisions

The general RPII rules in proposed § 1.953–3(b)(1) apply to taxable years of foreign corporations beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, and to taxable years of United States persons in which or with which such taxable years of foreign corporations end.

The cross-insurance rule in proposed § 1.953–3(b)(5) applies to taxable years of foreign corporations ending on or after January 24, 2022, and to taxable years of United States persons in which or with which such taxable years of foreign corporations end. As noted in part IV.C of the Background section of this preamble, section 953(c)(8)(A) and the legislative history refer to cross insurance in offshore captive insurance arrangements as avoidance transactions, and the legislative history states that deferral is not intended for such cases. The applicability date of the final regulations is not intended to address the effect of the statute and legislative history on taxpayers who participated in cross-insurance arrangements in years ending before January 24, 2022.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (''OMB'') regarding review of tax regulations.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (''PRA'') generally requires that a federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

The collections of information included in these proposed regulations are in proposed § 1.951A–1(e)(2)(iii); proposed § 1.958–1(e)(1)(v) and (e)(2); proposed § 1.964–1(c)(3)(ii) and (iii); proposed § 1.1295–1(d)(2)(i)(A) and (d)(2)(ii)(A); proposed § 1.1296–1(h)(1)(i) introductory text and (h)(1)(i)(B); and proposed § 1.1298–1(b)(1) and (2). The information in the collections of information provided will generally be used by the IRS for tax compliance purposes or by taxpayers to facilitate proper reporting and compliance.

A. Collections of Information Under Existing Tax Forms

1. Collections of Information in Proposed § 1.951A–1

The collections of information in proposed § 1.951A–1(e)(2)(iii) are required to be provided by domestic partnerships and S corporations that elect to apply the rules in proposed § 1.951A–5, as contained in the 2018 proposed regulations (83 FR 51072, 51101–51104), for taxable years ending before June 22, 2019. These collections of information are satisfied by the domestic partnership or S corporation attaching a statement to its return. In certain instances, the domestic partnership or S corporation must also file Form 8992, ''U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI),'' with its return and separately state each partner's or shareholder's share of any distributions of E&P received by the domestic partnership or S corporation that relate to the GILTI inclusion amount reflected on its Schedules K–1, ''Partner's Share of Income, Deductions, Credits, etc.'' or Schedules K–1, ''Shareholder's Share of Income, Deductions, Credits, etc.,'' as applicable.

For purposes of the PRA, the reporting burden associated with the collections of information in proposed § 1.951A–1(e)(2)(iii) will be reflected in the Paperwork Reduction Act Submissions associated with Forms 1065 and 1120–S (OMB control number 1545–0123).

2. Collections of Information in Proposed § 1.958–1

The collection of information in proposed § 1.958–1(e)(2) is a statement attached to Form 1120–S that identifies that the S corporation and its shareholders (where applicable) are electing for the S corporation to be treated as an entity for purposes of determining who is subject to income inclusions under sections 951 and 951A for the first taxable year ending on or after September 1, 2020, states the amount of the S corporation's AE&P, and is signed (where applicable) by a person authorized to sign the S corporation's Form 1120–S. A similar collection of information is required for taxpayers (certain S corporations and their shareholders) that elect for the S corporation to be treated as an entity for purposes of sections 951 and 951A for taxable years ending before September 1, 2020, and after June 21, 2019.

For purposes of the PRA, the reporting burden associated with the collection of information in proposed § 1.958–1(e)(2) will be reflected in the Paperwork Reduction Act Submissions associated with Form 1120–S (OMB control number 1545–0123). Additionally, where an S corporation and its shareholders elect for the S corporation to be treated as an entity for taxable years ending before September 1, 2020, and after June 21, 2019, the reporting burden associated with the collection of information in proposed § 1.958–1(e)(2) will be reflected in the Paperwork Reduction Act Submissions associated with Form 1120–S (OMB control number 1545–0123), the Form 1040 series (OMB control number 1545–0074), and the Form 1041 series (OMB control number 1545–0092).

3. Collections of Information in § 1.964–1 and Proposed § 1.964–1

The collection of information in proposed § 1.964–1(c)(3)(ii) applies to taxpayers that are controlling domestic shareholders of foreign corporations (as defined in § 1.964–1(c)(5)) and that make certain elections with respect to, or adopt or change methods of accounting or taxable years for, the foreign corporations. This collection of information is satisfied by the controlling domestic shareholder filing a statement containing certain prescribed information with its own tax return (or information return, if applicable) for its taxable year in which or within which the affected taxable year of the foreign corporation ends. The collection of information in proposed § 1.964–1(c)(3)(ii) applies to U.S. shareholder partners (and not to U.S. shareholder partnerships) as a result of proposed § 1.958–1(d)(1).

The collection of information in proposed § 1.964–1(c)(3)(iii) requires controlling domestic shareholders of foreign corporations to notify certain U.S. persons known to them of actions taken with respect to the foreign corporation, such as certain tax elections and adoptions of or changes to the foreign corporation's accounting methods or tax years. Under proposed § 1.964–1(c)(3)(iii)(A), this collection of information is satisfied by the controlling domestic shareholder providing notice to prescribed U.S. persons known to the controlling domestic shareholder setting forth the name, country of organization, and U.S. employer identification number (if applicable) of the foreign corporation; providing the names, addresses, and stock interests of the controlling domestic shareholders of the foreign corporation; describing the nature of the action taken on behalf of the foreign corporation and the taxable year for which the action was taken; and identifying a designated shareholder that retains a jointly executed consent confirming that such action has been approved by all of the controlling domestic shareholders and containing the signature of a principal officer of each such shareholder (or its common parent). Proposed § 1.964–1(c)(3)(iii)(B) provides that a controlling domestic shareholder will be deemed to satisfy the general notice requirement with respect to U.S. persons known to the controlling domestic shareholder that own stock in the foreign corporation through a domestic partnership by providing the notice containing the same information to the partnership instead of to each U.S. person.

For purposes of the PRA, the reporting burden associated with the collections of information in proposed § 1.964–1(c)(3)(ii) and (iii) will be reflected in the Paperwork Reduction Act Submissions associated with the Forms for persons which can be considered controlling domestic shareholders under the proposed regulations, including individuals and certain domestic trusts, domestic estates, domestic corporations, certain tax-exempt entities. Thus, the reporting burden associated with these collections of information will be reflected in the Paperwork Reduction Act Submissions associated with the Form 990 series (OMB control number 1545–0047), the Form 1040 series (OMB control number 1545–0074), the Form 1041 series (OMB control number 1545–0092), and the Form 1120 series (OMB control number 1545–0123).

4. Collections of Information in Proposed § 1.1295–1

The collections of information in proposed § 1.1295–1(d)(2)(i)(A) and (d)(2)(ii)(A) apply to partners in partnerships and S corporation shareholders that make QEF elections with respect to a PFIC held through a partnership or S corporation. The collections of information in these sections are satisfied, in part, by the partners and S corporation shareholders filing Form 8621 to make the QEF election. For purposes of the PRA, the reporting burden associated with the collection of information in the Form 8621 will be reflected in the Paperwork Reduction Act Submissions associated with Form 8621 (OMB control number 1545–1002).

5. Collection of Information in Proposed § 1.1296–1

The collections of information in proposed § 1.1296–1(h)(1)(i) apply to partners in partnerships and S corporation shareholders that make MTM elections with respect to PFICs

held through a partnership or S corporation. These collections of information are satisfied, in part, by the partners and S corporation shareholders filing Form 8621 to make the MTM election. For purposes of the PRA, the reporting burden associated with the collections of information in the Form 8621 will be reflected in the Paperwork Reduction Act Submissions associated with Form 8621 (OMB control number 1545–1002).

6. Collections of Information in Proposed § 1.1298–1

The collections of information in proposed § 1.1298–1(b)(1) apply to partners in partnerships and S corporation shareholders that own PFICs indirectly through partnerships and S corporations with respect to which they are required to file an annual report in their capacity as PFIC shareholders, as defined in proposed § 1.1291–1(b)(7). The collections of information in proposed § 1.1298–1(b)(2) apply to certain beneficiaries of domestic estates and domestic nongrantor trusts that own PFICs indirectly through the domestic estate or domestic nongrantor trust. These collections of information are satisfied by annually filing Form 8621. For purposes of the PRA, the reporting burden associated with the collections of information in the Form 8621 will be reflected in the Paperwork Reduction Act Submissions associated with Form 8621 (OMB control number 1545–1002).

7. Estimated Number of Respondents

The following table displays the number of respondents estimated to be required to satisfy the collections of information described in this part II.A of the Special Analysis. The ranges in the following table may be overstated in some cases for various reasons, including overcounting domestic partnerships or S corporations that are themselves partners in domestic partnerships and overestimating the number of taxpayers who will make an election or take a relevant action.

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
Proposed § 1.951A–1(e) (2)(iii): Election for domestic partnerships to apply the hybrid approach in proposed § 1.951A–5 of the 2018 proposed regulations.	0–7,000	Form 1065.
Proposed § 1.951A–1(e)(2)(iii): Election for S corporations to apply the hybrid approach in proposed § 1.951A–5 of the 2018 proposed regulations.	0–4,000	Form 1120–S.
Proposed § 1.958–1(e)(2): Election for S corporations with AE&P to apply entity treatment for purposes of sections 951 and 951A.	2,300–4,300	Form 1120–S. Form 1040 series. Form 1041 series.
Proposed § 1.964–1(c)(3)(ii) and (iii): Statement attached to tax return of controlling domestic shareholders of certain foreign corporations and notification to certain other U.S. persons.	6,600–7,000	Form 990 series. Form 1040 series. Form 1041 series. Form 1120 series.
Proposed § 1.1295–1(d)(2)(i)(A): QEF election made by partner that indirectly owns stock of a PFIC through a partnership.	1,200,000–1,400,000.	Form 8621.
Proposed § 1.1295–1(d)(2)(ii)(A): QEF election made by shareholder of an S corporation that indirectly owns stock of a PFIC through the S corporation.	2,000	Form 8621.
Proposed § 1.1296–1(h)(1)(i): MTM election made by partner that indirectly owns stock of a PFIC through a partnership.	75,000–200,000	Form 8621.
Proposed § 1.1296–1(h)(1)(i): MTM election made by shareholder of an S corporation that indirectly owns stock of a PFIC through the S corporation.	200–300	Form 8621.
Proposed § 1.1298–1(b)(1): Annual report for partners that indirectly own stock of a PFIC through a partnership.	1,250,000–1,500,000.	Form 8621.
Proposed § 1.1298–1(b)(1): Annual report for shareholders of S corporations that indirectly own stock of a PFIC through the S corporation.	2,300–2,500	Form 8621.
Proposed § 1.1298–1(b)(2): Annual report for certain beneficiaries of domestic estates or domestic grantor trusts that indirectly own stock of a PFIC through the estate or grantor trust.	5,000	Form 8621.

Source: Research, Applied Analytics and Statistics division (RAAS) (IRS), Compliance Data Warehouse (CDW) (IRS).

8. Status of PRA Submissions

The current status of the PRA submissions related to the tax forms on which reporting under these regulations will be required is summarized in the following table. The burdens associated with the information collections in the forms are included in aggregated burden estimates for the OMB control numbers 1545–0047 (which represents a total estimated burden time for all forms and schedules for tax-exempt entities of 50.5 million hours and total estimated monetized costs of $3.59 billion ($2018)), 1545–0074 (which represents a total estimated burden time for all forms and schedules for individuals of 1.784 billion hours and total estimated monetized costs of $31.764 billion ($2017)), 1545–0092 (which represents a total estimated burden time for all forms and schedules for trusts and estates of 307.8 million hours and total estimated monetized costs of $9.95 billion ($2016)), and 1545–0123 (which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017)). The burden estimates provided in the OMB control numbers in the following table are aggregate amounts that relate to the entire package of forms associated with the OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be revised as a result of the information collections in these proposed regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by these proposed regulations. To guard against over-counting the burden that international tax provisions imposed prior to the Act, the Treasury Department and the IRS urge readers to recognize that these burden estimates have also been cited by regulations (such as the foreign tax credit regulations, 84 FR 69022) that rely on the applicable OMB control numbers in order to collect information from the applicable types of filers.

In 2018, the IRS released and invited comment on drafts of Forms 990–PF (Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation), 990–T (Exempt Organization Business Income Tax Return), 1040 (U.S. Individual Income Tax Return), (U.S. Income Tax Return for Estates and Trusts), 1065 (U.S. Return of Partnership Income), 1120 (U.S. Corporation Income Tax Return), and 8621 (Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund). The IRS received comments only regarding Forms 1040, 1065, and 1120 during the comment period. After reviewing all such comments, the IRS made the forms available on December 21, 2018, for use by the public.

No burden estimates specific to the forms affected by the proposed regulations are currently available. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens for each relevant form and ways for the IRS to minimize the paperwork burden. In addition, drafts of IRS forms are posted for public review at *https://apps.irs.gov/app/picklist/list/draftTaxForms.htm.* Comments on these forms can be submitted at *https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications.* These forms will not be finalized until after they have been approved by OMB under the PRA.

B. Collections of Information for Which New OMB Control Numbers Are Being Requested

1. Collection of Information in Proposed § 1.958–1

The collection of information in proposed § 1.958–1(e)(1)(v) is required for certain S corporations to make valid elections under proposed § 1.958–1(e)(1)(i) to apply entity treatment for purposes of determining income inclusions under sections 951 and 951A. This collection of information is satisfied by the S corporation maintaining sufficient records to support the determination of its AE&P amount.

Estimated annual reporting burden: 213.

Estimated total annual monetized cost burden: $20,188.

Estimated average annual burden hours per respondent: 0.5.

Estimated number of respondents: 425.

Estimated annual frequency of responses: Once.

2. Collections of Information in Proposed § 1.1295–1

Part of the collection of information in proposed § 1.1295–1(d)(2)(i)(A) is for a partner to notify the partnership that the partner has made a QEF election with respect to a PFIC it owns indirectly through the partnership. This collection of information is satisfied by the partner notifying the partnership of the election no later than 30 days after filing the return with which the election is made. The partner may notify the partnership in any reasonable manner.

Estimated annual reporting burden: 650,000.

Estimated total annual monetized cost burden: $61,750,000.

Estimated average annual burden hours per respondent: 0.5.

Estimated number of respondents: 1,300,000.

Estimated annual frequency of responses: One-time election.

Part of the collection of information in proposed § 1.1295–1(d)(2)(ii)(A) is for an S corporation shareholder to notify the S corporation that the shareholder has made a QEF election with respect to a PFIC it owns indirectly through the S corporation. This collection of information is satisfied by the shareholder notifying the S corporation of the election no later than 30 days after filing the return with which the election is made. The shareholder may notify the S corporation in any reasonable manner.

Estimated annual reporting burden: 1,000.

Estimated total annual monetized cost burden: $95,000.

Estimated average annual burden hours per respondent: 0.5.

Estimated number of respondents: 2,000.

Estimated annual frequency of responses: One-time election.

3. Collection of Information in Proposed § 1.1296–1

The collection of information in proposed § 1.1296–1(h)(1)(i)(B) is for a partner or an S corporation shareholder to notify the partnership or S corporation, respectively, that the partner or shareholder has made an MTM election with respect to a PFIC it owns indirectly through the partnership or S corporation. This collection of information is satisfied by the partner or shareholder notifying the partnership or S corporation of the election no later than 30 days after filing the return with which the election is made. The partner or shareholder may notify the partnership or S corporation in any reasonable manner.

Estimated annual reporting burden: 35,500.

Estimated total annual monetized cost burden: $3,372,500.

Estimated average annual burden hours per respondent: 0.5.

Estimated number of respondents: 71,000.

Estimated annual frequency of responses: One-time election.

4. Submission to OMB and Request for Comments

The collections of information contained in proposed §§ 1.958–1(e)(1)(v); 1.1295–1(d)(2)(i)(A) and (d)(2)(ii)(A); and 1.1296–1(h)(1)(i)(B) are either general recordkeeping or notice requirements and cannot be associated with existing OMB control numbers. These collections of information will be submitted to the Office of Management and Budget for review and, if approved, assigned new OMB control numbers in accordance with the PRA. Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by March 28, 2022. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the duties of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information for the collections discussed in part II.B of this Special Analyses.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the proposed regulations would not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (''small entities'').

The Small Business Administration establishes small business size standards (13 CFR part 121) by annual receipts or number of employees. There are several industries that may be identified as small even through their annual receipts are above $25 million or because of the number of employees. The Treasury Department and the IRS do not have data indicating the number of small entities that will be significantly impacted by the proposed regulations. Nevertheless, regardless of the number of small entities potentially impacted, the Treasury Department and the IRS have concluded that the proposed regulations will not have a significant economic impact on small entities.

First, the proposed regulations provide guidance with respect to domestic partnerships under the PFIC regime, which generally affects U.S. taxpayers that have ownership interests in certain foreign corporations that are not CFCs. To the extent that a foreign entity might be considered a small entity for purposes of the Regulatory Flexibility Act (because it has a place of business in the United States and makes a significant contribution to the U.S. economy, for example), because the proposed regulations would not affect foreign partnerships, foreign partners of the affected domestic partnerships, or the PFIC itself, there would be no economic impact on those foreign entities. Therefore, a small entity generally would not be affected by the proposed regulations unless it is a U.S. taxpayer that has an ownership interest in a foreign corporation. For purposes of the Regulatory Flexibility Act, natural persons are not considered small entities.

Although data on U.S. businesses that invest in a PFIC is limited, data available to the IRS shows that individuals (Form 1040 filers) make up approximately 70 percent of those who report PFIC income while U.S. businesses of all sizes make up approximately 20 percent of Form 8621 filers. To estimate the magnitude of the taxes currently collected as a result of U.S. businesses investing in PFICs, the Treasury Department and the IRS calculated the ratio of PFIC regime tax to (gross) total income for 2013 through 2018 for corporations that filed Form 1120 (''C corporations'') with a Form 8621 attached. Total income was determined by matching each C corporation filing Form 8621 to its Form 1120. Ordinary QEF income, QEF capital gains, and MTM income were assumed to be taxed at 35 percent (21 percent for 2018), and the section 1291 tax and interest charge tax were included as reported. Only those corporations where a match was found and that had positive total income were included in the analysis. For the approximately 150 to 300 C corporations for which a match was available in a given year, the average annual ratio of the calculated tax to total income was never greater than 0.00035 percent. For the approximately 60 to 200 C corporations per year with $25 million or less for which a match was available, the average annual ratio was never greater than 1.068 percent.

	2013 ($ millions)	2014 ($ millions)	2015 ($ millions)	2016 ($ millions)	2017 ($ millions)	2018 ($ millions)
All C corporations						
Tax	5	12	14	8	22	42
Total Income	4,204,795	10,154,520	19,935,845	20,076,876	21,625,159	13,317,244
Tax to Total Income	0.000%	0.000%	0.000%	0.000%	0.000%	0.000%
C corporations with total income of $25 million or less						
Tax	(*)	(*)	4	4	5	3
Total Income	463	563	627	573	460	741
Tax to Total Income	0.060%	0.014%	0.576%	0.689%	1.068%	0.400%

Source: RAAS, CDW. * indicates less than $1 million.

Thus, even if the economic impact of the proposed regulations is interpreted broadly to include the tax liability due under the PFIC regime, which small entities would be required to pay even if the proposed regulations were not issued, the tax-related economic impact should not be regarded as significant under the Regulatory Flexibility Act.

A portion of the economic impact of the proposed regulations derives from the administration of the new rules and the collection of information requirements imposed by the PFIC-related provisions in proposed §§ 1.1295–1(d)(2)(i)(A) and (d)(2)(ii)(A), 1.1296–1(h)(1)(i), and 1.1298–1(b)(1) and (2). For the collections of information in proposed §§ 1.1295–1(d)(2)(i)(A) and (d)(2)(ii)(A) and 1.1296–1(h)(1)(i), the Treasury Department and the IRS have determined that the average burden is approximately half an hour per response. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is $95 per hour. Thus, the annual burden per taxpayer from the collection of information requirement for each of these provisions is approximately $48. Additionally, these requirements apply only if a taxpayer chooses to make an election. For the collections of information in proposed § 1.1298–1(b)(1) and (2), the Treasury Department and the IRS have determined that the average burden is approximately 49 hours per response. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is $95 per hour. Thus, the annual burden per taxpayer from the collection of information requirement in this provision is approximately $4,655. This requirement applies to taxpayers required to file Form 8621 with respect to a PFIC. In each case, the compliance burden associated with the PFIC-related provisions in the proposed regulations is generally shifted from the entity level to the owner level. For example, under proposed §§ 1.1295–1(d)(2)(i)(A) and 1.1298–1(b)(1), a domestic partnership no longer makes a QEF election with respect to, and no longer files Form

8621 for, PFICs it owns; rather, the election and associated Form 8621 will be made and filed, respectively, by the partners. While this shift could result in some duplication of the overall compliance burden associated with the PFIC-related provisions in the proposed regulations, the Treasury Department and the IRS do not believe this shift should have a significant economic impact on taxpayers.

Additionally, the proposed regulations provide guidance with respect to several statutory provisions within subpart F, which generally affect U.S. shareholders of CFCs. To estimate the magnitude of the tax impact of these provisions on small entities, the Treasury Department and the IRS examined the gross receipts of all taxpayers that e-filed Forms 5471 as a Category 4 or 5 filer for 2015 and 2016, which amounted to approximately 25,000 to 35,000 taxpayers in each year. The Treasury Department and the IRS then determined the tax revenue generated from the approximately 25,000 to 35,000 taxpayers' section 951A inclusions [4] estimated by the Joint Committee on Taxation for businesses of all sizes is less than 0.3 percent of gross receipts, as shown in the table that follows. Based on data for 2015 and 2016, total gross receipts for all businesses with gross receipts under $25 million is $60 billion while those over $25 million is $49.1 trillion. Given that tax on section 951A inclusions is generally correlated with gross receipts, this results in businesses with less than $25 million in gross receipts accounting for approximately 0.01 percent of the tax revenue. Additionally, although data are generally not readily available to determine the sectoral breakdown of these entities, the number of domestic partnerships and S corporations subject to these provisions under the proposed regulations should make up only a portion of the totals. For example, the Treasury Department and the IRS estimate that there were approximately 7,000 domestic partnerships that e-filed at least one Form 5471 as a Category 4 or 5 filer in each of 2015 and 2016, amounting to 28 percent of the low-end estimate of all taxpayers filing Form 5471 as a Category 4 or 5 filer and 20 percent of the high-end estimate. Based on this analysis, the proposed regulations do not impose a significant economic impact on smaller businesses, in particular domestic partnerships and S corporations.

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Joint Committee on Taxation (JCT) tax revenue.	7.7 billion	12.5 billion.	9.6 billion	9.5 billion	9.3 billion	9.0 billion	9.2 billion	9.3 billion	15.1 billion.	21.2 billion.
Total gross receipts	30727 billion.	53870 billion.	566676 billion.	59644 billion.	62684 billion.	65865 billion.	69201 billion.	72710 billion.	76348 billion.	80094 billion.
Percent	0.03	0.02	0.02	0.02	0.01	0.01	0.01	0.01	0.02	0.03.

Source: Research, Applied Analytics and Statistics division (IRS), Compliance Data Warehouse (IRS) (E-filed Form 5471, category 4 or 5, C and S corporations and partnerships); Conference Report, at 689.

Thus, even if the economic impact of the proposed regulations is interpreted broadly to include the tax liability due under subpart F, which small entities would be required to pay even if the proposed regulations were not issued, the tax-related economic impact should not be regarded as significant under the Regulatory Flexibility Act.

A portion of the economic impact of the proposed regulations derives from the collection of information requirements imposed by the provisions related to CFCs and other types of foreign corporations in proposed § 1.951A–1(e)(2)(iii), proposed § 1.958–1(e)(1)(v) and (e)(2), and proposed § 1.964–1(c)(3)(ii) and (iii). The Treasury Department and the IRS have determined that the average burden for each of these provisions is approximately half an hour per response. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is $95 per hour. Thus, the annual burden per taxpayer from the collection of information requirement for each of these provisions is approximately $48. These requirements apply only if a taxpayer chooses to make an election with respect to the CFC or other foreign corporation. In the case of proposed § 1.964–1(c)(3)(ii) and (iii), the compliance burden is generally shifted from the U.S. shareholder partnership level to its U.S. shareholder partners. While this shift could result in some duplication of the overall compliance burden associated with these provisions, the Treasury Department and the IRS do not believe this shift should result in a significant economic impact on taxpayers.

Accordingly, it is hereby certified that the proposed regulations would not have a significant economic impact on a substantial number of small entities.

IV. Section 7805(f)

Pursuant to section 7805(f), the proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses. The Treasury Department and the IRS also request comments from the public on the analysis in part III of the Special Analyses.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance

[4] The Treasury Department and the IRS determined that using section 951A inclusions, rather than section 951 inclusions, would serve as a better indication of the potential tax impact of the proposed regulations on small entities that own CFCs because the base upon which a U.S. shareholder's section 951A inclusion is computed (a CFC's gross income—with certain exceptions—less allocable deductions) is generally broader than the base upon which its section 951 inclusion is computed (a CFC's income from specified transactions).

costs on state and local governments or preempt state law within the meaning of the Executive order.

Comments and Requests for Public Hearing

Before the proposed amendments are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. See also parts I.B.1 and I.C.1 of the Explanation of Provisions requesting comments related to the possibility of delegating authority to domestic partnerships and S corporations to make QEF and MTM elections on behalf of their owners; part II.D of the Explanation of Provisions requesting comments on (i) whether a U.S. person holding an option to acquire stock (or other non-stock interest) in a RPII CFC should be treated as a related insured, (ii) the allocation of premium payments made by a partnership, (iii) the general application of aggregate principles to RPII, (iv) necessary revisions to forms and instructions to facilitate information sharing and reporting for RPII purposes, and (v) other parts of the 1991 proposed regulations relating to RPII, including whether other parts should be reproposed (such as the exception for indirect ownership through publicly traded corporations); and part III of the Explanation of Provisions requesting comments on the calculation of indirect shareholders' net gain for purposes of section 1411. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal authors of these regulations are Edward Tracy, Raphael Cohen, and Josephine Firehock of the Office of Associate Chief Counsel (International), and Caroline E. Hay and Jennifer N. Keeney of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Partial Withdrawal of Proposed Regulations

Under the authority of 26 U.S.C. 7805, proposed § 1.953–3(b)(1) and (5) contained in the notice of proposed rulemaking that was published in the **Federal Register** on April 17, 1991 (56 FR 15540), is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.**The authority citation for part 1 is amended by:
■ 1. Adding a sectional authority for § 1.953–3 in numerical order;
■ 2. Revising the sectional authorities for §§ 1.1293–1, 1.1295–1, and 1.1296–1;
■ 3. Adding sectional authorities for §§ 1.1297–0 and 1.1297–3 in numerical order;
■ 4. Arranging the sectional authority for § 1.1298–1 in numerical order and revising the authority; and
■ 5. Adding a sectional authority for § 1.1298–3 in numerical order.

The additions and revisions read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.953–3 also issued under 26 U.S.C. 953(c)(8).

* * * * *

Section 1.1293–1 also issued under 26 U.S.C. 1298(g).

* * * * *

Section 1.1295–1 also issued under 26 U.S.C. 1295(b)(2) and 1298(g).

* * * * *

Section 1.1296–1 also issued under 26 U.S.C. 1298(a)(1)(B) and (g).

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Section 1.1297–0 also issued under 26 U.S.C. 1298(g).

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Section 1.1297–3 also issued under 26 U.S.C. 1298(g).

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Section 1.1298–1 also issued under 26 U.S.C. 1298(f) and (g).

* * * * *

Section 1.1298–3 also issued under 26 U.S.C. 1298(g).

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■ **Par. 2.** Section 1.951A–1 is amended by revising paragraph (e) to read as follows:

§ 1.951A–1 General provisions.

* * * * *

(e) *Stock owned through domestic partnerships and S corporations*—(1) *Cross-references.* See § 1.958–1(d) for rules regarding the ownership of stock of a foreign corporation through a domestic partnership (or S corporation, as defined in section 1361(a)(1), by reason of section 1373(a)) for purposes of section 951A and for purposes of any provision that specifically applies by reference to section 951A or the section 951A regulations. See § 1.958–1(e) for rules regarding an election for certain S corporations to be treated as an entity for purposes of section 951A and the section 951A regulations.

(2) *Application of entity treatment for taxable years ending before June 22, 2019*—(i) *General rule.* If a domestic partnership or S corporation satisfies the notification and reporting requirements in paragraph (e)(2)(iii) of this section, the domestic partnership or S corporation may apply the rules in proposed § 1.951A–5 as if the amendments proposed on October 10, 2018, had been finalized in their entirety (*proposed GILTI rules*), for taxable years ending before June 22, 2019.

(ii) *Inapplicability of penalties.* If a domestic partnership or S corporation satisfies the requirements of paragraph (e)(2)(iii) of this section, penalties for failures described in sections 6698(a), 6699(a), 6722(a), or any similar provision will not apply to the domestic partnership or S corporation to the extent such failures arise from acting consistently with the proposed GILTI rules before June 22, 2019.

(iii) *Notification and reporting requirements*—(A) *Notification.* To be eligible for the rules described in paragraphs (e)(2)(i) and (ii) of this section, a domestic partnership or S corporation must provide the notification described in paragraphs (e)(2)(iii)(A)(*1*) through (*3*) of this section to each partner of the

partnership or shareholder of the S corporation. Such notification must be provided no later than the due date (taking into account extensions, if any, or any additional time that would have been granted if the domestic partnership or S corporation had made an extension request) of the domestic partnership's or S corporation's tax return for the last taxable year ending before June 22, 2019, and may be provided through any reasonable method, including via mail, email, or posting on a website through which the domestic partnership or S corporation would ordinarily disseminate tax information to its partners or shareholders. The domestic partnership or S corporation must also attach the notification described in this paragraph (e)(2)(iii)(A) and Form 8992, ''U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI),'' reflecting computations under the proposed GILTI rules to any tax return with respect to which the rules described in paragraph (e)(2)(i) or (ii) of this section are being applied if the tax return has not been filed as of September 9, 2019. The notification required under this paragraph (e)(2)(iii) must provide—

(*1*) That the Schedule K–1, ''Partner's Share of Income, Deductions, Credits, etc.,'' or the Schedule K–1, ''Shareholder's Share of Income, Deductions, Credits, etc.,'' provided to the partner or shareholder, respectively, is consistent with the proposed GILTI rules;

(*2*) Whether the domestic partnership or S corporation filed a Form 1065, ''U.S. Return of Partnership Income,'' or Form 1120–S, ''U.S. Income Tax Return for an S Corporation,'' consistent with the proposed GILTI rules or this paragraph (e); and

(*3*) That the notification is provided in accordance with Notice 2019–46, 2019–37 I.R.B. 695.

(B) *Schedule K–1 distribution reporting.* If a domestic partnership or S corporation furnished a Schedule K–1 based on the proposed GILTI rules, the domestic partnership or S corporation must separately state on Schedules K–1 for subsequent taxable years the partner's or shareholder's distributive share or pro rata share of a foreign corporation's distributions to the domestic partnership or S corporation of earnings and profits that relate to the GILTI inclusion amount of the partnership or S corporation that was reflected on the initially provided Schedules K–1. This information must be provided for each taxable year of the domestic partnership or S corporation following the taxable year to which the first Schedule K–1 relates.

* * * * *

■ **Par. 3.** Section 1.951A–7 is amended by adding paragraph (e) to read as follows:

§ 1.951A–7 Applicability dates.

* * * * *

(e) *Entity treatment of domestic partnerships and S corporations.* Section 1.951A–1(e)(2) applies to taxable years of foreign corporations ending before June 22, 2019, and to taxable years of United States shareholders in which or with which such taxable years end.

■ **Par. 4.** Section 1.953–3 is revised to read as follows:

§ 1.953–3 Related person insurance income.

(a) [Reserved]

(b) *Related person insurance income*—(1) *Definition of related person insurance income*—(i) *In general.* Insurance income under section 953(a) includes related person insurance income under section 953(c)(2). Related person insurance income is premium and investment income attributable to an annuity, insurance, or reinsurance policy that directly or indirectly provides coverage to a related insured as defined in paragraph (b)(1)(ii) of this section. For purposes of this section, the terms *United States shareholder* and *controlled foreign corporation* have the meaning provided in section 953(c)(1).

(ii) *Related insured.* Except as provided in paragraph (b)(5)(ii) of this section, with respect to a foreign corporation, a related insured means any of the following—

(A) A United States shareholder of the foreign corporation;

(B) A person that is related to a United States shareholder within the meaning of section 953(c)(6);

(C) A pass-through entity, if a related insured (other than a pass-through entity) owns stock in the foreign corporation indirectly (within the meaning of section 958(a)) through the pass-through entity; or

(D) A person (other than a publicly traded corporation or publicly traded partnership) that is more than 50 percent owned by United States shareholders of the foreign corporation as described in paragraph (b)(1)(v) of this section.

(iii) *Amount treated as related person insurance income with respect to a pass-through entity*—(A) *In general.* In the case of a pass-through entity that is a related insured, the amount treated as related person insurance income is equal to the insurance income attributable to the policy that directly or indirectly provides coverage to the pass-through entity multiplied by the fraction described in paragraph (b)(1)(iii)(B) of this section.

(B) *Fraction.* The fraction described in this paragraph (b)(1)(iii)(B) is equal to—

(*1*) The total amount of premiums paid or accrued by the pass-through entity for the policy that is allocated (directly or indirectly, through one or more pass-through entities) to all related insureds (other than pass-through entities); divided by

(*2*) The total amount of premiums paid or accrued by the pass-through entity for the policy.

(C) *Allocation*—(*1*) *Partnerships.* For purposes of paragraph (b)(1)(iii)(B) of this section, the total amount of premiums paid or accrued by a partnership that is allocated to the related insureds is determined in accordance with the partnership agreement and section 704(b).

(*2*) *S corporations.* For purposes of paragraph (b)(1)(iii)(B) of this section, the total amount of premiums paid or accrued by an S corporation that is allocated to the related insureds is determined on a pro rata basis.

(iv) *Pass-through entities.* For purposes of paragraph (b)(1) of this section, a pass-through entity is an S corporation or a domestic or foreign partnership (other than a publicly traded partnership).

(v) *Ownership.* The ownership threshold described in paragraph (b)(1)(ii)(D) of this section is met if United States shareholders collectively own (after applying the principles of section 958(a) and (b)) more than 50 percent of the stock in a corporation (by vote or value), more than 50 percent of the capital or profits interests in a partnership, or more than 50 percent of the interests in a trust or estate.

(vi) *Stock owned through domestic partnerships or S corporations.* See § 1.958–1(d) for rules regarding the ownership of stock of a foreign corporation through a domestic partnership or S corporation for purposes of section 953(c) and for purposes of any provision that specifically applies by reference to section 953(c) or the regulations in this part under section 953 that relate to section 953(c).

(vii) *Examples.* The following examples illustrate the rules of paragraph (b)(1) of this section.

(A) *Example 1*—(*1*) *Facts.* FC is a foreign corporation engaged in the insurance business. FC is wholly owned by FP, a foreign partnership. DC, a domestic corporation, owns 25% of the interests in FP. The remaining interests

in FP are held by unrelated foreign corporations. Under the partnership agreement, all items of income, gain, loss, deduction, and credit are allocated 25% to DC and 75% to the other partners. In Year 1, FC issues the FP policy, under which FP is insured. FP pays a premium of $80 for the FP policy. The insurance income attributable to the FP policy (including both premium and investment income) is $100. FC earns an additional $1,000 of income that is treated as related person insurance income. Under section 704(b), DC would be allocated $20 (25%) of the premium paid or accrued by FP.

(*2*) *Result.* Under paragraph (b)(1)(ii)(C) of this section, FP is treated as a related insured with respect to FC because it is a pass-through entity through which DC indirectly owns stock in FC. Therefore, under paragraph (b)(1)(i) of this section, a portion of the insurance income attributable to the FP policy is treated as related person insurance income. Under paragraph (b)(1)(iii)(A) of this section, the amount of related person insurance income with respect to FP is equal to the insurance income attributable to the FP policy ($100) multiplied by the fraction described in paragraph (b)(1)(iii)(B) of this section. That fraction is equal to the portion of the premium paid by FP that is allocable to DC ($20) divided by the total premium paid by FP ($80), or 25%. Therefore, FC has $25 of related person insurance income under section 953(c)(2) attributable to the FP policy in Year 1.

(B) *Example 2*—(*1*) *Facts.* FC is a foreign corporation engaged in the insurance business. Two domestic corporations, DC1 and DC2, each own 50% of the stock of FC. In addition, DC1 and DC2 each own 50% of the stock in DC3, a domestic corporation. In Year 1, FC issues the DC3 policy, under which DC3 is insured. The insurance income attributable to the DC3 policy is $100. FC earns an additional $1,000 of income that is treated as related person insurance income.

(*2*) *Result.* DC3 meets the requirements of paragraph (b)(1)(v) of this section because United States shareholders of FC (DC1 and DC2) collectively own all the stock of DC3. Therefore, under paragraph (b)(1)(ii)(D) of this section, DC3 is treated as a related insured with respect to FC. Consequently, under paragraph (b)(1)(i) of this section, all of FC's $100 of insurance income attributable to the DC3 policy is treated as related person insurance income under section 953(c)(2).

(2) through (4) [Reserved]

(5) *Cross-insurance arrangements*—(i) *In general.* Related person insurance income includes insurance income attributable to an arrangement (or a substantially similar arrangement with a similar degree of cooperative risk sharing) whereby a foreign corporation issues an insurance, reinsurance, or annuity contract to a person other than a related insured and, as part of the arrangement (involving one or more other persons), another person issues an insurance, reinsurance, or annuity contract to a related insured of the foreign corporation.

(ii) *Related insured.* For purposes of applying paragraph (b)(5)(i) of this section before the applicability date described in paragraph (c)(1) of this section, the term *related insured* means, with respect to a foreign corporation, a United States shareholder of the foreign corporation or a person that is related to a United States shareholder within the meaning of section 953(c)(6).

(iii) *Example.* Controlled foreign corporation X is owned by 30 unrelated United States shareholders. Controlled foreign corporation Y is owned by 30 unrelated United States shareholders (that is, unrelated to X and Y and the shareholders of X and Y). X agrees to provide insurance protection to Y's shareholders, and Y agrees to provide insurance to X's shareholders. The insurance income of both X and Y that is attributable to insuring the shareholders of the other corporation constitutes related person insurance income.

(c) *Applicability date*—(1) *In general.* Paragraph (b)(1) of this section applies to taxable years of foreign corporations beginning on or after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], and to taxable years of United States persons in which or with which such taxable years of foreign corporations end.

(2) *Cross-insurance rule.* Paragraph (b)(5) of this section applies to taxable years of foreign corporations ending on or after January 24, 2022, and to taxable years of United States persons in which or with which such taxable years of foreign corporations end (in each case without regard to when the arrangement was entered into).

■ **Par. 5.** Section 1.958–1, as amended in a final rule published elsewhere in this issue of the **Federal Register**, effective January 25, 2022, is amended by:

■ 1. Revising the first sentence of paragraph (d)(1);

■ 2. Revising paragraph (d)(2)(v);

■ 3. Adding a sentence to the end of paragraph (d)(4)(i); and

■ 4. Adding paragraph (e).

The revisions and addition read as follows:

§ 1.958–1 Direct and indirect ownership of stock.

* * * * *

(d) * * * (1) * * * Except as otherwise provided in paragraph (d)(2) of this section, for purposes of sections 951, 951A, 953(c), and 956(a) and § 1.964–1(c), and for purposes of any provision that specifically applies by reference to any of such sections or the regulations in this part under section 951, 951A, 953, or 956 (but only as the regulations in this part under section 953 or section 956 relate to section 953(c) or section 956(a), respectively), a domestic partnership is not treated as owning stock of a foreign corporation within the meaning of section 958(a). * * *

(2) * * *

(v) Applying section 953(c)(1)(A) for purposes of determining whether any foreign corporation is a controlled foreign corporation as defined in sections 953(c)(1)(B), 953(c)(3)(E), or 953(d)(1)(A).

* * * * *

(4) * * *

(i) * * * Notwithstanding the prior sentences, paragraph (d)(2)(v) of this section and the inclusion of the references to section 953(c) and § 1.964–1(c) in paragraph (d)(1) of this section apply to taxable years of foreign corporations beginning on or after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], and to taxable years of United States persons in which or with which such taxable years of foreign corporations end.

* * * * *

(e) *Elective entity treatment for certain S corporations*—(1) *In general.* Except as otherwise provided in this paragraph (e), with respect to an S corporation (as defined in section 1361(a)(1)), paragraph (d)(1) of this section shall not apply, and such S corporation shall be treated as owning stock of a foreign corporation within the meaning of section 958(a), if—

(i) The S corporation and its shareholders (where applicable) make the election described in paragraph (e)(2) of this section;

(ii) The S corporation made its election under section 1362(a) before June 22, 2019;

(iii) The S corporation would have been treated as owning stock of a controlled foreign corporation within the meaning of section 958(a) on June 22, 2019, if § 1.951A–1(e) (as in effect and contained in 26 CFR part 1, as

revised April 1, 2021) did not apply to it;

(iv) The S corporation had transition accumulated earnings and profits (as defined in paragraph (e)(3) of this section) on September 1, 2020, or on the first day of any subsequent taxable year; and

(v) The S corporation maintains sufficient records to support the determination of the transition accumulated earnings and profits amount.

(2) *Election*—(i) *Time and manner of making election.* With respect to the first taxable year ending on or after September 1, 2020, an S corporation may irrevocably elect to apply the provisions of paragraph (e)(1) of this section on a timely-filed (including extensions) original Form 1120–S, ''U.S. Income Tax Return for an S Corporation,'' by attaching a statement to such return including the contents of paragraph (e)(2)(ii) of this section. For taxable years of an S corporation ending before September 1, 2020, and after June 21, 2019, the S corporation and all of its shareholders may irrevocably elect to apply the provisions of paragraph (e)(1) of this section on timely-filed (including extensions) original returns or on amended returns filed by March 15, 2021, by attaching a statement including the contents of paragraph (e)(2)(ii) of this section thereto. An election described in Section 3.02 of Notice 2020–69, 2020–39 I.R.B. 604 that is filed (in the time and manner specified in Section 3.02 of Notice 2020–69) on or before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**] is deemed to satisfy the election requirement of this paragraph (e)(2).

(ii) *Contents of election statement.* The statement described in paragraph (e)(2)(i) of this section must:

(A) Identify that the S corporation and its shareholders (where applicable) are electing for the S corporation to be treated as owning stock of a foreign corporation within the meaning of section 958(a) under paragraph (e)(2) of this section;

(B) Include the amount of transition accumulated earnings and profits (as defined in paragraph (e)(3) of this section); and

(C) Where applicable, be signed by a person authorized to sign the S corporation's return that is required to be filed under section 6037.

(3) *Transition accumulated earnings and profits*—(i) *In general.* For purposes of this section, the term *transition accumulated earnings and profits* means, with respect to an S corporation and its shareholders, the amount of accumulated earnings and profits of the S corporation calculated as of September 1, 2020, reduced as described in paragraph (e)(3)(ii) of this section. Transition accumulated earnings and profits are not increased as a result of transactions occurring (or entity classification elections described in § 301.7701–3 of this chapter filed) after September 1, 2020. For purposes of this section, transition accumulated earnings and profits are not transferable to another person under any provision of the Code.

(ii) *Reduction solely by distributions.* An S corporation with transition accumulated earnings and profits is treated as having no transition accumulated earnings and profits if, beginning after September 1, 2020, the S corporation distributes in one or more distributions a cumulative amount of accumulated earnings and profits equal to or greater than the amount of the S corporation's transition accumulated earnings and profits as of September 1, 2020.

(4) *Required aggregate treatment.* In the case of an S corporation that has made an election under paragraph (e)(2) of this section and which satisfies the additional requirements of paragraph (e)(1) of this section, paragraph (d) of this section shall apply beginning with the S corporation's first taxable year for which the S corporation has no transition accumulated earnings and profits on the first day of that year, and to each subsequent taxable year of the S corporation.

(5) *Examples.* The following examples illustrate the application of paragraph (e).

(i) *Example 1*—(A) *Facts.* Individual A and Individual B, each a United States citizen, respectively own 5% and 95% of the single class of stock of SCX, an S corporation. SCX's sole asset is 100% of the single class of stock of FC, a controlled foreign corporation, which SCX has held since June 1, 2019. None of SCX, Individual A, or Individual B own shares, directly or indirectly, in any other controlled foreign corporation. Individual A, Individual B, SCX, and FC all use the calendar year as their taxable year. On January 1, 2021, SCX has transition accumulated earnings and profits of $100x and AAA of $0. SCX elects to apply the transition rules under paragraph (e)(1) of this section. During the 2021 taxable year, FC has $200x of tested income (within the meaning of § 1.951A–2(b)(1)) and $0 of qualified business asset investment (QBAI) (within the meaning of § 1.951A–3(b)).

(B) *Analysis*—(*1*) *S corporation level.* As an electing S corporation with transition accumulated earnings and profits on the first day of the taxable year (January 1, 2021), SCX is treated as owning (within the meaning of section 958(a)) all the stock of FC for purposes of applying sections 951 and 951A and any provision that applies specifically by reference thereto. Accordingly, SCX, a United States shareholder of FC, determines its GILTI inclusion amount under § 1.951A–1(c)(1) for its 2021 taxable year. SCX's pro rata share of FC's tested income is $200x, and its pro rata share of FC's QBAI is $0. SCX's net CFC tested income (within the meaning of § 1.951A–1(c)(2)) is $200x, and its net deemed tangible income return (within the meaning of § 1.951A–1(c)(3)) is $0. As a result, SCX's GILTI inclusion amount for 2021 is $200x. At the end of 2021, SCX increases its AAA by $200x to reflect the GILTI inclusion amount. Because SCX computes its income as an individual under section 1363(b), it cannot take a section 250 deduction for any GILTI inclusion amount. See § 1.250(a)–1(c)(1).

(*2*) *S corporation shareholder level.* Neither Individual A nor Individual B is treated as owning the stock in FC within the meaning of section 958(a). Accordingly, Individual A and Individual B include in gross income their pro rata shares of SCX's GILTI inclusion amount as described in section 1366(a), which is $10x ($200x × 5%) for Individual A and $190x ($200x × 95%) for Individual B.

(ii) *Example 2*—(A) *Facts.* The facts are the same as in paragraph (e)(5)(i) of this section, except that, on December 31, 2021, SCX distributes $300x to its shareholders. In addition, FC has an additional $200x of tested income (within the meaning of § 1.951A–2(b)(1)) and $0 of QBAI (within the meaning of § 1.951A–3(b)) during the 2022 taxable year.

(B) *Analysis*—(*1*) *Determination of transition accumulated earnings and profits.* Before taking into account the distribution on December 31, 2021, the results for taxable year 2021 are the same as in paragraph (e)(5)(i)(B) of this section. For 2021, $200x, the portion of SCX's $300x distribution that does not exceed AAA, is subject to section 1368(c)(1). The remaining distribution of $100x is treated as a dividend under section 316 to the extent of SCX's accumulated earnings and profits. As of January 1, 2022, SCX has $0 of transition accumulated earnings and profits under paragraph (e)(3) of this section because the cumulative amount of SCX's distributions out of accumulated earnings and profits after

September 1, 2020, equals or exceeds the amount of SCX's transition accumulated earnings and profits as of September 1, 2020.

(*2*) *S corporation level.* Because SCX has no transition accumulated earnings and profits as of January 1, 2022, paragraph (d) of this section applies to SCX for its taxable year 2022 and for each subsequent taxable year. As a result, for purposes of determining a GILTI inclusion amount in its taxable year 2022, SCX is not treated as owning (within the meaning of section 958(a)) the FC stock; instead, SCX is treated in the same manner as a foreign partnership for purposes of determining the FC stock owned by Individual A and Individual B under section 958(a)(2). Accordingly, SCX does not have a GILTI inclusion amount for its 2022 taxable year (or for any subsequent taxable year) and therefore will not increase its AAA as a result of GILTI inclusion amounts attributable to FC stock for its taxable year 2022 (or for any subsequent taxable year).

(*3*) *S corporation shareholder level.* With respect to Individual A, for purposes of determining the GILTI inclusion amount for taxable year 2022, Individual A is treated as owning 5% of the FC stock under section 958(a). Individual A is not a United States shareholder of FC because Individual A owns (within the meaning of section 958(a) and (b)) less than 10% of the FC stock. Accordingly, Individual A does not have a GILTI inclusion amount for taxable year 2022. With respect to Individual B, for purposes of determining the GILTI inclusion amount for taxable year 2022, Individual B is treated as owning 95% of the FC stock under section 958(a). In addition, Individual B is a United States shareholder of FC because Individual B owns (within the meaning of section 958(a) and (b)) at least 10% of the FC stock. Accordingly, Individual B's pro rata share of FC's tested income is $190x ($200x × 95%), and Individual B's pro rata share of FC's QBAI is $0. Individual B's net CFC tested income is $190x, and Individual B's net deemed tangible income return is $0. As a result, Individual B's GILTI inclusion amount for taxable year 2022 is $190x.

(6) *Applicability date.* This paragraph (e) applies to taxable years of S corporations ending on or after September 1, 2020. Taxpayers may choose to apply this paragraph (e) to taxable years of S corporations ending on or after June 22, 2019, provided that the S corporation and its shareholders that are United States shareholders consistently apply the rules set forth in this paragraph (e) with respect to all controlled foreign corporations whose stock the S corporation owns within the meaning of section 958(a).

* * * * *

■ **Par. 6.** Section 1.964–1 is amended by:

■ 1. Revising the first sentence of paragraph (c)(2);

■ 2. Removing the language ''domestic shareholders'' in the first sentence of paragraph (c)(3)(ii) and adding ''United States persons'' in its place;

■ 3. Revising paragraph (c)(3)(iii);

■ 4. Removing the language ''noncontrolled section 902 corporation'' in paragraphs (c)(4)(i)(B) and (c)(4)(ii) and adding ''noncontrolled foreign corporation'' in its place;

■ 5. Revising paragraph (c)(5)(ii);

■ 6. Redesignating paragraph (c)(8) as paragraph (c)(9);

■ 7. Adding a new paragraph (c)(8); and

■ 8. In paragraph (d):

■ i. Revising the heading;

■ ii. Removing ''Paragraphs (c)(1)(v) through (c)(6),'' ''26 CFR 1.964–1T(c)(1)(v) through (c)(6),'' and ''paragraphs (c)(1)(v) through (c)(6)'' everywhere they appear and adding ''Paragraphs (c)(1)(v) and (vi) and (c)(2) through (6),'' ''26 CFR 1.964–1T(c)(1)(v) and (vi) and (c)(2) through (6),'' and ''paragraphs (c)(1)(v) and (vi) and (c)(2) through (6)'' in their places, respectively; and

■ iii. Adding two sentences to the end of the paragraph.

The revisions and additions read as follows:

§ 1.964–1 Determination of the earnings and profits of a foreign corporation.

* * * * *

(c) * * *

(2) * * * For the first taxable year of a foreign corporation in which such foreign corporation first qualifies as a controlled foreign corporation (as defined in section 957 or 953) or a foreign corporation (other than a controlled foreign corporation as defined in section 957 or 953) as to which a United States person that is a United States shareholder (within the meaning of section 951(b)) owns stock (within the meaning of section 958(a)) (such corporation, a ''noncontrolled foreign corporation''), any method of accounting or taxable year allowable under this section may be adopted, and any election allowable under this section may be made, by such foreign corporation or on its behalf notwithstanding that, in previous years, its books or financial statements were prepared on a different basis, and notwithstanding that such election is required by the Code or regulations in this chapter to be made in a prior taxable year. * * *

(3) * * *

(iii) *Notice*—(A) *In general.* Except as otherwise provided in paragraph (c)(3)(iii)(B) of this section, on or before the filing date described in paragraph (c)(3)(ii) of this section, the controlling domestic shareholders must provide written notice of the election made or the adoption or change of method or taxable year effected to all other persons known by them to be United States persons that own (within the meaning of section 958(a)) stock of the foreign corporation (*domestic shareholders*) and to any other United States person that is a ''Category 4 filer'' of Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations,'' with respect to the foreign corporation (that is, certain United States persons that control, within the meaning of section 6038(e), the foreign corporation). Thus, for example, this notice is required to be provided to domestic shareholders that own (within the meaning of section 958(a)) stock in the foreign corporation through one or more domestic partnerships. The notice required in this paragraph (c)(3)(iii)(A) must set forth the name, country of organization, and U.S. employer identification number (if applicable) of the foreign corporation, and the names, addresses, and stock interests of the controlling domestic shareholders. Such notice must also describe the nature of the action taken on behalf of the foreign corporation and the taxable year for which made, and identify a designated shareholder that retains a jointly executed consent confirming that such action has been approved by all of the controlling domestic shareholders and containing the signature of a principal officer of each such shareholder (or its common parent). However, the failure of the controlling domestic shareholders to provide such notice to a person required to be notified does not invalidate the election made or the adoption or change of method or taxable year effected.

(B) *Special rule for domestic partnerships.* A controlling domestic shareholder will be deemed to satisfy the notice requirement of paragraph (c)(3)(iii)(A) of this section with respect to any domestic shareholder that is a partner in a domestic partnership by providing notice to a domestic partnership (known to the controlling domestic shareholder) through which the domestic shareholder owns stock of the foreign corporation, instead of to the domestic shareholder.

* * * * *

(5) * * *

(ii) *Noncontrolled foreign corporations.* For purposes of this paragraph (c), the controlling domestic shareholders of a noncontrolled foreign corporation are its majority domestic shareholders. The majority domestic shareholders of a noncontrolled foreign corporation are those United States shareholders (within the meaning of section 951(b)) that own (within the meaning of section 958(a)) stock in the noncontrolled foreign corporation and that, in the aggregate, own (within the meaning of section 958(a)), or are considered as owning by applying the rules of section 958(b), more than 50 percent of the combined voting power of all of the voting stock of the noncontrolled foreign corporation that is owned by all United States shareholders that own (within the meaning of section 958(a)), or are considered as owning by applying the rules of section 958(b), stock of the noncontrolled foreign corporation.

* * * * *

(8) *Stock owned through domestic partnerships.* See § 1.958–1(d) for rules regarding the ownership of stock of a foreign corporation through a domestic partnership for purposes of paragraph (c) of this section and for purposes of any provision that specifically applies by reference to paragraph (c) of this section.

* * * * *

(d) *Applicability dates.* * * * Notwithstanding the preceding sentences in this paragraph (d), paragraphs (c)(2), (c)(3)(ii) and (iii), (c)(4)(i)(B), (c)(4)(ii), (c)(5)(ii), and (c)(8) of this section apply to taxable years of foreign corporations beginning on or after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], and to taxable years of United States persons in which or with which such taxable years end. For taxable years of foreign corporations beginning before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], and to taxable years of foreign United States persons in which or with which such taxable years end, see § 1.964–1(c)(2), (c)(3)(ii) and (iii), (c)(4)(i)(B), (c)(4)(ii), and (c)(5)(ii) as in effect and contained in 26 CFR part 1, as revised April 1, 2021.

■ **Par. 7.** Section 1.1291–1 is amended by:

■ 1. Revising paragraphs (b)(7), (c)(4)(i), and (c)(4)(ii)(A) and (B);

■ 2. Adding paragraph (c)(5);

■ 3. Removing the language ''Paragraphs (c)(3) and (4)'' in paragraph (j)(1) and adding ''Paragraph (c)(3)'' in its place;

■ 4. Removing the language ''paragraphs (b)(2)(ii) and (v), (b)(7) and (8), and (e)(2) of this section'' in paragraph (j)(3) and adding ''paragraphs (b)(2)(ii) and (v), (b)(8), and (e)(2) of this section'' in its place; and

■ 5. Adding paragraph (j)(5).

The revisions and additions read as follows:

§ 1.1291–1 Taxation of U.S. persons that are shareholders of section 1291 funds.

* * * * *

(b) * * *

(7) *Shareholder.* Except as otherwise provided in this paragraph (b)(7) or paragraph (e) of this section, a shareholder of a PFIC is a United States person that directly owns stock of a PFIC (a direct shareholder), or that is an indirect shareholder (as defined in paragraph (b)(8) of this section). Notwithstanding the previous sentence, neither a domestic partnership nor an S corporation (as defined in section 1361(a)(1)) is treated as a shareholder of a PFIC. In addition, to the extent that a person is treated under sections 671 through 678 as the owner of a portion of a domestic trust, the trust is not treated as a shareholder of a PFIC with respect to PFIC stock held by that portion of the trust, except for purposes of the information reporting requirements of § 1.1298–1(b)(3)(i) (imposing an information reporting requirement on domestic liquidating trusts and fixed investment trusts).

* * * * *

(c) * * *

(4) * * * (i) *In general.* If PFIC stock is marked to market for any taxable year under section 475 or any other provision of chapter 1 of the Internal Revenue Code, other than section 1296, regardless of whether the application of such provision is mandatory or results from an election by the shareholder (as defined in paragraph (b)(7) of this section) or another person, then, except as provided in paragraph (c)(4)(ii) of this section, section 1291 and the regulations in this part thereunder do not apply to any distribution with respect to such PFIC stock or to any disposition of such PFIC stock for such taxable year. See §§ 1.1295–1(i)(3) and 1.1296–1(h)(3)(i) for rules regarding the automatic termination of an existing election under section 1295 or section 1296 when a shareholder marks to market PFIC stock under section 475 or any other provision of chapter 1 of the Internal Revenue Code.

(ii) * * * (A) Notwithstanding any provision in this section to the contrary, with respect to a shareholder (as defined in paragraph (b)(7) of this section), the rule of paragraph (c)(4)(ii)(B) of this section applies to the first taxable year in which the shareholder's PFIC stock is marked to market under a provision of chapter 1 of the Internal Revenue Code, other than section 1296, if such foreign corporation was a PFIC for any taxable year before the taxable year in which the PFIC stock is marked to market, which is during the shareholder's holding period (as defined in section 1291(a)(3)(A) and § 1.1296–1(f)) in such stock, and for which such corporation was not treated as a QEF with respect to such shareholder.

(B) For the first taxable year of a shareholder in which the shareholder's PFIC stock is marked to market under any provision of chapter 1 of the Internal Revenue Code, other than section 1296, such shareholder, in lieu of the rules under which the stock is marked to market, applies the rules of § 1.1296–1(i)(2) and (3) as if an election had been made under section 1296 for such first taxable year.

(5) *Coordination with section 1297(d)*—(i) *In general.* For purposes of section 1297(d), with respect to a partner or S corporation shareholder that would be considered an indirect shareholder, through its ownership in a domestic partnership or S corporation, with respect to a foreign corporation that is a PFIC and a controlled foreign corporation (as defined in section 957), the term ''qualified portion'' does not include any portion of such indirect shareholder's holding period during which it was not a United States shareholder (as defined in section 951(b)) with respect to the foreign corporation.

(ii) *Transition rule.* For taxable years of shareholders beginning before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], or for taxable years of shareholders of an S corporation in which the S corporation elects to apply § 1.958–1(e), for purposes of section 1297(d), a partner's or S corporation shareholder's qualified portion with respect to the foreign corporation includes the portion of its holding period during which it—

(A) Is an indirect shareholder under paragraph (b)(8)(iii)(A) or (B) of this section with respect to the foreign corporation; and

(B) Included in gross income its distributive or pro rata share of any amount that the domestic partnership or S corporation, respectively, included under sections 951(a)(1) and 951A(a) with respect to stock in the foreign corporation (treating the requirement in this paragraph (c)(5)(ii)(B) as not satisfied to the extent § 1.958–1(d)(1) through (3) is applied with respect to

the domestic partnership or S corporation before their general applicability date under § 1.958–1(d)(4) or the domestic partnership or S corporation relied on the earlier proposed version of such provisions). See, for example, § 1.951A–1(e)(2).

* * * * *

(j) * * *

(5) Paragraphs (b)(7), (c)(4)(i), (c)(4)(ii)(A) and (B), and (c)(5) of this section apply to taxable years of shareholders beginning on or after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. For taxable years of shareholders beginning before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], see § 1.1291–1(b)(7), (c)(4)(i), and (c)(4)(ii)(A) and (B) as in effect and contained in 26 CFR part 1, as revised April 1, 2021.

§ 1.1291–9 [Amended]

■ **Par. 8.** Section 1.1291–9 is amended by:

■ 1. Removing the language ''the undistributed earnings and profits, within the meaning of section 902(c)(1)'' in paragraph (a)(2)(i) and adding ''the amount of the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986)'' in its place;

■ 2. Removing the language ''section 1297(e) PFIC'' in paragraphs (i) and (j)(2)(v) introductory text and adding ''section 1297(d) PFIC'' in its place wherever it appears; and

■ 3. Removing the language ''section 1297(e)(2)'' in paragraph (j)(2)(v)(A) and adding ''section 1297(d)(2)'' in its place.

■ **Par. 9.** Section 1.1293–1 is amended by:

■ 1. Adding paragraphs (a)(3) and (4);

■ 2. Revising paragraphs (c)(1) and (2);

■ 3. Redesignating paragraph (c)(3) as paragraph (c)(4);

■ 4. Adding a new paragraph (c)(3); and

■ 5. Revising newly redesignated paragraph (c)(4).

The additions and revisions read as follows:

§ 1.1293–1 Current taxation of income from qualified electing funds.

(a) * * *

(3) *Pass-through entity defined.* For purposes of this section, the term *pass-through entity* has the meaning provided in § 1.1295–1(j)(2).

(4) *Applicability dates.* Paragraph (a)(3) of this section applies to taxable years of shareholders beginning on or after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

* * * * *

(c) * * * (1) *In general.* Except as otherwise provided in this paragraph (c), a shareholder that makes a section 1295 election as provided in § 1.1295–1(d)(2) with respect to stock in a PFIC that it is treated as owning by reason of an interest in a pass-through entity, or a shareholder that is treated as owning stock in a QEF by reason of an interest in a domestic partnership that has made a preexisting partnership section 1295 election (within the meaning of § 1.1295–1(d)(2)(i)(B)) or in an S corporation that has made a preexisting S corporation section 1295 election (within the meaning of § 1.1295–1(d)(2)(ii)(B)), includes in income its pro rata share of ordinary earnings and net capital gain attributable to the QEF stock as if the shareholder directly owned its share of the QEF stock held by the pass-through entity.

(2) *Section 1295 election made by domestic nongrantor trust or domestic estate.* Notwithstanding paragraph (c)(1) of this section, if a domestic nongrantor trust or domestic estate makes a section 1295 election as provided in § 1.1295–1(d)(2)(iii)(A)(*1*) with respect to PFIC stock that it owns, the domestic nongrantor trust or domestic estate includes in income its pro rata share of ordinary earnings and net capital gain attributable to the QEF stock. A shareholder that is treated as owning such QEF stock by reason of an interest in the domestic nongrantor trust or domestic estate accounts for its pro rata share of ordinary earnings and net capital gain attributable to such stock according to the general rules applicable to inclusions of income from the domestic nongrantor trust or domestic estate.

(3) *QEF stock transferred to a pass-through entity*—(i) *In general.* Except as otherwise provided in this paragraph (c)(3), if a shareholder transfers stock in a PFIC subject to a section 1295 election to a pass-through entity in which it is an interest holder, such shareholder continues to include in income its pro rata share of ordinary earnings and net capital gain attributable to the QEF stock held by the transferee pass-through entity, under paragraph (c)(1) of this section. Proper adjustments to reflect an inclusion in income under section 1293 by the indirect shareholder must be made, under the principles of § 1.1291–9(f), to the basis of the indirect shareholder's interest in the pass-through entity.

(ii) *Shareholders other than the transferor.* Except as otherwise provided in this paragraph (c)(3), if a shareholder transfers stock in a PFIC subject to a section 1295 election to a pass-through entity and such stock is not subject to a preexisting QEF election made by the pass-through entity, any other person that becomes a shareholder of such PFIC as a result of the transfer will be subject to the income inclusion rules of this section only if such person makes a section 1295 election with respect to the transferred PFIC stock under § 1.1295–1(d)(2).

(iii) *QEF stock transferred to domestic nongrantor trust.* Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, if a shareholder transfers stock in a PFIC subject to a section 1295 election to a domestic nongrantor trust in which it is a beneficiary, and the transferee domestic nongrantor trust makes a section 1295 election with respect to that stock pursuant to § 1.1295–1(d)(2)(iii)(A)(*1*), the domestic nongrantor trust, and the transferor and any person that becomes a shareholder of the QEF as a result of the transfer, take into account their share of ordinary earnings and net capital gain attributable to the QEF shares under paragraph (c)(2) of this section. If the transferee domestic nongrantor trust does not make a section 1295 election with respect to the transferred PFIC stock, the transferor continues to be subject, in its capacity as an indirect shareholder, to the income inclusion rules of paragraph (c)(1) of this section.

(4) *Applicability date.* Paragraph (c) of this section applies to taxable years of shareholders beginning on or after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. For taxable years of shareholders beginning before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], see § 1.1293–1(c), as in effect and contained in 26 CFR part 1, as revised April 1, 2021.

■ **Par. 10.** Section 1.1295–1 is amended by:

■ 1. Revising paragraph (b)(3);

■ 2. Removing the language ''are defined in paragraph (j) of this section'' in paragraph (c)(1) and adding ''are defined in paragraphs (j)(3) and (4) of this section, respectively'' in its place;

■ 3. Removing the language ''(as defined in paragraph (j) of this section)'' in paragraph (c)(2)(iv) and adding ''(as defined in paragraph (j)(2) of this section)'' in its place;

■ 4. Revising paragraphs (d)(1), (d)(2)(i)(A) and (B), and (d)(2)(ii);

■ 5. In paragraph (d)(2)(iii)(A)(*1*):

■ i. Removing the language ''§ 1.1293–1(c)(1)'' and adding ''§ 1.1293–1(c)(2)'' in its place; and

■ ii. Removing the language ''domestic trust or estate'' and adding ''domestic

nongrantor trust or domestic estate'' in its place;
■ 6. Revising paragraph (f)(2)(i) introductory text;
■ 7. Redesignating paragraph (f)(3) as paragraph (f)(5);
■ 8. Adding a new paragraph (f)(3) and paragraph (f)(4);
■ 9. Removing the language ''as defined in paragraph (j) of this section'' in paragraph (g)(3) and adding ''as defined in paragraph (j)(1) of this section'' in its place;
■ 10. Removing the language ''(as defined in paragraph (j) of this section)'' and ''§ 1.1295–1'' in paragraph (h) and adding ''(as defined in paragraph (j)(4) of this section)'' and ''this section'' in their places, respectively;
■ 11. Removing and reserving paragraph (i)(1)(ii);
■ 12. Revising paragraph (j); and
■ 13. In paragraph (k):
■ i. Revising the heading;
■ ii. Removing the language ''(b)(3),'' in the first sentence;
■ iii. Removing the language ''and (c) through (j) of this section'' in the first sentence and adding ''(c), (d)(2)(iv), (d)(3) through (d)(6), (e), (f)(1), (f)(2)(ii), (g), (h), (i)(1)(i) and (iii), and (i)(2) through (5) of this section'' in its place;
■ iv. Removing the language ''(f) and (g) of this section'' in the second sentence of and adding ''(f)(1), (f)(2)(ii), and (g) of this section'' in its place;
■ v. Removing the third sentence; and
■ vi. Adding two sentences at the end of the paragraph.

The revisions and additions read as follows:

§ 1.1295–1 Qualified electing funds.

* * * * *

(b) * * *

(3) *Application of general rules to stock held by a pass through entity*—(i) *Stock subject to a section 1295 election transferred to a domestic nongrantor trust or domestic estate.* A shareholder's section 1295 election will not apply to a domestic nongrantor trust or domestic estate to which the shareholder transfers stock subject to a section 1295 election, or to any other United States person that is a beneficiary of the domestic nongrantor trust or estate. However, as provided in paragraph (c)(2)(iv) of this section (relating to a transfer to a domestic pass through entity of stock subject to a section 1295 election), a shareholder that transfers stock subject to a section 1295 election to a domestic nongrantor trust or domestic estate will continue to be subject to the section 1295 election with respect to the stock indirectly owned through the domestic nongrantor trust or domestic estate and any other stock of that PFIC owned by the shareholder.

(ii) *Limitation on application of domestic nongrantor trust's or domestic estate's section 1295 election.* Except as provided in paragraph (c)(2)(iv) of this section, a section 1295 election made by a domestic nongrantor trust or domestic estate does not apply to other stock of the PFIC held directly or indirectly by the beneficiary.

(iii) *Effect of partnership termination on preexisting partnership section 1295 election.* The termination of a preexisting partnership section 1295 election (within the meaning of paragraph (d)(2)(i)(B) of this section) by reason of the termination of the partnership under section 708(b) will not terminate the section 1295 election with respect to partners of the terminated partnership that are partners of the new partnership (continuing partners). The stock of the PFIC of which a new partner (partners other than continuing partners) is an indirect shareholder will be treated as stock of a QEF with respect to such partner only if the new partner makes or has made a section 1295 election with respect to that stock under paragraph (d)(2)(i)(A) of this section.

(iv) *Characterization of stock held through a pass-through entity.* Stock of a PFIC held through a pass-through entity will be treated as stock of a pedigreed QEF with respect to a shareholder (as defined in paragraph (j)(3) of this section) that is treated as owning such stock by reason of an interest in the pass-through entity only if—

(A) In the case of PFIC stock acquired (other than in a transaction in which gain is not fully recognized, including pursuant to regulations in this part under section 1291(f)) and held by a domestic pass-through entity, the domestic pass-through entity has made a preexisting section 1295 election under paragraph (d)(2)(i)(B) or (d)(2)(ii)(B) of this section, or makes an election under paragraph (d)(2)(iii)(A)(*1*) of this section, and the PFIC has been a QEF with respect to the pass-through entity for all taxable years that are included in the pass-through entity's holding period of the PFIC stock and during which the foreign corporation was a PFIC within the meaning of § 1.1291–9(j)(1);

(B) In the case of PFIC stock acquired (other than in a transaction in which gain is not fully recognized, including pursuant to regulations in this part under section 1291(f)) and held by a domestic pass-through entity, other than PFIC stock described in paragraph (b)(3)(iv)(A) of this section, through which the shareholder is treated as owning such PFIC stock, the shareholder makes the section 1295 election under paragraph (d)(2)(i)(A), (d)(2)(ii)(A), (d)(2)(iii)(A)(*2*), or (d)(2)(iii)(B) of this section, and the PFIC has been a QEF with respect to the shareholder for all taxable years that are included in the shareholder's holding period for the PFIC stock, and during which the foreign corporation was a PFIC within the meaning of § 1.1291–9(j)(1); or

(C) In the case of PFIC stock transferred by an interest holder or beneficiary to a pass-through entity in a transaction in which gain is not fully recognized (including pursuant to regulations in this part under section 1291(f)), if the pass-through entity made a preexisting section 1295 election under paragraph (d)(2)(i)(B) or (d)(2)(ii)(B) of this section with respect to the PFIC stock, or the shareholder or pass-through entity, as applicable, makes a section 1295 election under paragraph (d)(2)(i)(A), (d)(2)(ii)(A), (d)(2)(iii)(A)(*1*) or (*2*), or (d)(2)(iii)(B) of this section, in each case for the taxable year in which the transfer was made, or the shareholder's section 1295 election continues pursuant to paragraph (c)(2)(iv) of this section. If the foreign corporation was a PFIC within the meaning of § 1.1291–9(j) at the time of the transfer, the PFIC stock transferred will be treated as stock of a pedigreed QEF with respect to a transferor, however, only if that stock was treated as stock of a pedigreed QEF with respect to the transferor at the time of the transfer. In all cases subject to this paragraph (b)(3)(iv)(C), the PFIC stock will be treated as stock of a pedigreed QEF only if the PFIC has been a QEF for all taxable years of the PFIC that are included wholly or partly in the shareholder's holding period of the PFIC stock during which the foreign corporation was a PFIC within the meaning of § 1.1291–9(j).

(v) *Characterization of stock distributed by a partnership.* In the case of PFIC stock distributed by a partnership to one or more partners in a transaction in which gain is not fully recognized (including pursuant to regulations in this part under section 1291(f)), the PFIC stock will be treated as stock of a pedigreed QEF by a shareholder only if that stock was treated as stock of a pedigreed QEF with respect to the shareholder immediately before the distribution, or, in the case of a distribution of PFIC stock by a partnership to one or more partners in the first year of the distributee partner or partners' holding period of the PFIC stock, the distributee partner or partners

make an election as provided in paragraph (d)(2) of this section.

* * * * *

(d) * * * (1) *General rule.* Except as otherwise provided in this paragraph (d), any shareholder (as defined in paragraph (j)(3) of this section) of a PFIC, including a shareholder that holds stock of a PFIC in bearer form, may make a section 1295 election with respect to that PFIC. The shareholder need not own directly or indirectly any stock of the PFIC when the shareholder makes the section 1295 election provided the shareholder is a shareholder of the PFIC during the taxable year of the PFIC that ends with or within the taxable year of the shareholder for which the section 1295 election is made.

(2) * * * (i) * * * (A) *In general.* If a partnership (domestic or foreign) holds stock of a PFIC, the section 1295 election with respect to such PFIC is made by a shareholder (as defined in paragraph (j)(3) of this section) indirectly owning the PFIC stock by reason of its interest in the partnership. A section 1295 election made by a shareholder under this paragraph (d)(2)(i)(A) applies to the stock of the PFIC indirectly owned by the shareholder by reason of its interest in the partnership and to any other stock of the PFIC owned by the shareholder. A shareholder making an election under this paragraph (d)(2)(i)(A) must do so in the form and manner provided in paragraph (f) of this section. The shareholder must also notify the partnership of the election no later than 30 days after filing the return in which the election is made; the shareholder may notify the partnership in any reasonable manner. However, the failure of the shareholder to notify the partnership of its election does not invalidate an otherwise valid election under this paragraph (d)(2)(i)(A). A shareholder making an election under this paragraph (d)(2)(i)(A) accounts for its pro rata share of ordinary earnings and net capital gain attributable to the QEF stock as provided in § 1.1293–1(c)(1).

(B) *Preexisting section 1295 election by domestic partnership.* Any section 1295 election made by a domestic partnership with respect to a PFIC effective for taxable years of the PFIC ending on or before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**] (*preexisting partnership section 1295 election*) will be treated as if it were made by each shareholder that is treated as owning stock in the PFIC by reason of its interest in the domestic partnership on or before such date, and the stock in the PFIC will continue to be treated as stock in a QEF to such shareholder; any partner that becomes a shareholder of the PFIC by acquiring an interest in the domestic partnership after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**] and wishes to have a section 1295 election applicable with respect to the PFIC may make a section 1295 election under paragraph (d)(2)(i)(A) of this section with respect to stock treated as owned by reason of its interest in the domestic partnership. A shareholder that is treated as owning stock of a QEF by reason of an interest in a domestic partnership that has made a preexisting partnership section 1295 election accounts for its pro rata share of the ordinary earnings and net capital gain attributable to such QEF stock as provided in § 1.1293–1(c)(1).

(ii) *S corporation*—(A) *In general.* If an S corporation holds stock of a PFIC, the section 1295 election with respect to such PFIC is made by a shareholder (as defined in paragraph (j)(3) of this section) indirectly owning the PFIC stock by reason of its interest in the S corporation. A section 1295 election made by a shareholder under this paragraph (d)(2)(ii)(A) applies to the stock of the PFIC held by the shareholder by reason of its interest in the S corporation and to any other stock of the PFIC held by the shareholder. A shareholder making an election under this paragraph (d)(2)(ii)(A) must do so in the form and manner provided in paragraph (f) of this section. The shareholder must also notify the S corporation of the election no later than 30 days after filing the return in which the election is made; the shareholder may notify the S corporation in any reasonable manner. However, the failure of the shareholder to notify the S corporation of its election does not invalidate an otherwise valid election under this paragraph (d)(2)(ii)(A). A shareholder making an election under this paragraph (d)(2)(ii)(A) accounts for its pro rata share of ordinary earnings and net capital gain attributable to the QEF stock as provided in § 1.1293–1(c)(1).

(B) *Preexisting section 1295 election by S corporation.* Any section 1295 election made by an S corporation with respect to a PFIC effective for taxable years of such PFIC ending on or before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**] (*preexisting S corporation section 1295 election*) will be treated as if it were made by each shareholder that is treated as owning stock in the PFIC by reason of its interest in the S corporation on or before such date, and the stock in the PFIC will continue to be treated as stock in a QEF to such shareholder; any S corporation shareholder that becomes a shareholder of the PFIC by acquiring an interest in the S corporation after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**] and wishes to have a section 1295 election applicable with respect to the PFIC may make a section 1295 election under paragraph (d)(2)(ii)(A) of this section with respect to stock treated as owned by reason of its interest in the S corporation. A shareholder that is treated as owning stock of a QEF by reason of an interest in an S corporation that has made a preexisting S corporation section 1295 election accounts for its pro rata share of the ordinary earnings and net capital gain attributable to the QEF stock as provided in § 1.1293–1(c)(1).

* * * * *

(f) * * *

(2) * * * (i) *In general.* A shareholder that makes a section 1295 election with respect to a PFIC, or a shareholder that is treated as owning stock in a QEF by reason of an interest in a domestic partnership that has made a preexisting partnership section 1295 election (within the meaning of paragraph (d)(2)(i)(B) of this section) or by reason of an interest in an S corporation that has made a preexisting S corporation section 1295 election (within the meaning of paragraph (d)(2)(ii)(B) of this section), for each taxable year to which the section 1295 election applies, must—

* * * * *

(3) *Preexisting partnership or S corporation section 1295 election.* A shareholder that is treated as owning stock in a QEF by reason of an interest in a domestic partnership that has made a preexisting partnership section 1295 election or by reason of an interest in an S corporation that has made a preexisting S corporation section 1295 election does not need to make a section 1295 election with respect to such QEF under the rules of paragraph (f)(1) of this section. However, such shareholder must comply with the annual election requirements as provided in paragraph (f)(2) of this section.

(4) *Notice requirement for partners and S corporation shareholders.* See paragraphs (d)(2)(i)(A) and (d)(2)(ii)(A) of this section for a notice requirement for partners and S corporation shareholders making a section 1295 election under this section.

* * * * *

(j) *Definitions.* For purposes of this section—

(1) *Intermediary.* The term *intermediary* means a nominee or shareholder of record that holds stock on behalf of the shareholder or on behalf of another person in a chain of ownership between the shareholder and the PFIC, and any direct or indirect beneficial owner of PFIC stock (including a beneficial owner that is a pass-through entity) in the chain of ownership between the shareholder and the PFIC.

(2) *Pass-through entity.* The term *pass-through entity* means a partnership, S corporation, trust, or estate.

(3) *Shareholder.* The term *shareholder* has the meaning provided in § 1.1291–1(b)(7).

(4) *Shareholder's election year.* The term *shareholder's election year* means the taxable year of the shareholder for which it makes the section 1295 election.

(k) *Applicability dates.* * * * Paragraphs (b)(3), (d)(1), (d)(2)(i) and (ii), (f)(2)(i), (f)(3) and (4), and (j) of this section apply to taxable years of shareholders beginning on or after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. For taxable years of shareholders beginning before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], see § 1.1295–1(b)(3), (d)(1), (d)(2)(i) and (ii), (f)(2)(i), (i)(1)(ii), and (j) as in effect and contained in 26 CFR part 1, as revised April 1, 2021.

■ **Par. 11.** Section 1.1296–1 is amended by:

■ 1. Adding paragraph (a)(4);

■ 2. Revising paragraph (e)(1);

■ 3. Removing paragraph (g)(3);

■ 4. Revising paragraphs (h)(1)(i) and (j); and

■ 5. For each paragraph listed in the following table, removing the language in the ''Remove'' column and adding in its place the language in the ''Add'' column.

Paragraph	Remove	Add
(b)(1)	United States person	shareholder.
(b)(2), heading	United States person	shareholder.
(b)(2), first sentence	United States person	shareholder.
(b)(2), first sentence	U.S. person	shareholder.
(b)(2), second sentence	United States person's	shareholder's.
(b)(3), second sentence	United States person's	shareholder's.
(b)(3), second sentence	person owns directly	shareholder owns directly.
(c)(1)	United States person's	shareholder's.
(c)(1)	United States person	shareholder.
(c)(3)	United States person's	shareholder's.
(c)(3)	such person	such shareholder.
(c)(5)	United States person	shareholder.
(d)(1)	United States person	shareholder.
(d)(2), heading	certain foreign entities	pass-through entities.
(d)(2)(i), first and last sentences	United States person	shareholder.
(d)(2)(i), first sentence	certain foreign entities	pass-through entities.
(d)(2)(i), first sentence	foreign entity	entity.
(d)(2)(i), last sentence	United States person's	shareholder's.
(e), heading	foreign entities	pass-through entities.
(f)	taxpayer	shareholder.
(f)	taxpayer's	shareholder's.
(g)(1)	United States person	shareholder.
(g)(2), heading	United States person	shareholder.
(g)(2)(i)	United States person	shareholder.
(h)(1)(ii)	controlling United States shareholders	controlling domestic shareholders.
(h)(2)(ii), first sentence	United States person	shareholder.
(h)(2)(ii), last sentence	United States person's	shareholder's.
(h)(3)(i), first sentence	United States person's	shareholder's.
(h)(3)(i), first sentence	United States person	shareholder.
(h)(3)(ii), second sentence	United States person	shareholder.
(i)(1)	United States person's	shareholder's.
(i)(1)	United States person	shareholder.
(i)(2), introductory text	United States person	shareholder.
(i)(2)(ii)	United States person's	shareholder's.
(i)(2)(ii)	taxpayer's	shareholder's.

The addition and revisions read as follows:

§ 1.1296–1 Mark to market election for marketable stock.

(a) * * *

(4) *Shareholder.* The term *shareholder* has the meaning provided in § 1.1291–1(b)(7).

* * * * *

(e) * * * (1) *In general.* Except as provided in paragraph (e)(2) of this section, the following rules apply in determining stock ownership for purposes of this section. PFIC stock owned, directly or indirectly, by or for a partnership (domestic or foreign), S corporation, foreign trust (other than a foreign trust that is described in sections 671 through 679), or foreign estate is considered as being owned proportionately by its partners, shareholders, or beneficiaries, respectively. PFIC stock owned, directly or indirectly, by or for a trust (domestic or foreign) described in sections 671 through 679 is considered as being owned proportionately by its grantors or other persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock. The determination of a person's proportionate interest in a partnership, S corporation, trust, or estate will be made on the basis of all the facts and circumstances. Stock considered owned by a person by reason of this paragraph

is treated as actually owned by such person for purposes of applying the rules of this section.

* * * * *

(h) * * * (1) * * * (i) *Shareholders.* Except as otherwise provided in this paragraph (h), a shareholder (as defined in paragraph (a)(4) of this section) that owns marketable stock in a PFIC, or is treated as owning marketable stock under paragraph (e) of this section, on the last day of the shareholder's taxable year, must make a section 1296 election for such taxable year on or before the due date (including extensions) of its income tax return for that year. The section 1296 election must be made on the Form 8621, ''Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund'' (or successor form), included with the original or superseding tax return of the shareholder for that year.

(A) *Preexisting section 1296 election.* Notwithstanding paragraph (h)(1)(i) of this section, any section 1296 election with respect to a PFIC made by a domestic partnership or S corporation effective for taxable years of the PFIC ending on or before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**] (*preexisting section 1296 election*) will continue to apply, and any stock in the PFIC that a shareholder is treated as owning by reason of its interest in the domestic partnership or S corporation on or before such date will continue to be treated as section 1296 stock to such shareholder; any person that becomes a shareholder of the PFIC by acquiring an interest in the domestic partnership or S corporation after such date that wishes for a section 1296 election to apply with respect to the PFIC may make a section 1296 election as provided in paragraphs (b)(1) and (h)(1)(i) of this section. A shareholder that is treated as owning section 1296 stock by reason of an interest in a domestic partnership or S corporation that has made a preexisting 1296 election under this paragraph (h)(1)(i)(A) accounts for its share, through its ownership in the domestic partnership or S corporation, of any mark to market gain recognized under paragraph (c)(1) of this section and any mark to market loss under paragraph (c)(3) of this section as if it owned the section 1296 stock directly.

(B) *Notice.* A shareholder that makes a section 1296 election with respect to section 1296 stock owned through a partnership or S corporation must notify the partnership or S corporation of the election no later than 30 days after filing the return in which the election is made; the shareholder may provide such notification in any reasonable manner. However, the failure of the shareholder to notify the partnership or S corporation of its election will not invalidate an otherwise valid section 1296 election.

* * * * *

(j) *Applicability date.* Except as otherwise provided in this paragraph (j), the provisions in this section apply to taxable years beginning on or after May 3, 2004. The provisions of paragraph (d)(4) of this section relating to section 1022 apply on and after January 19, 2017. The provisions of paragraphs (a)(4); (b)(1) through (3); (c)(1), (3), and (5); (d)(1) and (d)(2)(i); (e)(1); (f); (g)(1), (g)(2)(i), and (g)(3); (h)(1)(i) and (ii), (h)(2)(ii), and (h)(3)(i) and (ii); and (i)(1), (i)(2) introductory text, and (i)(2)(ii) apply to taxable years of shareholders beginning on or after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. For taxable years of shareholders beginning before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], see § 1.1296–1(b)(1) through (3); (c)(1), (3), and (5); (d)(1) and (d)(2)(i); (e)(1); (f); (g)(1), (g)(2)(i), and (g)(3); (h)(1)(i) and (ii), (h)(2)(ii), and (h)(3)(i) and (ii); and (i)(1), (i)(2) introductory text, and (i)(2)(ii) as in effect and contained in 26 CFR part 1, as revised April 1, 2021.

§ 1.1297–0 [Amended]

■ **Par. 12.** Section 1.1297–0 is amended by removing the language ''section 1297(e) PFIC'' from the heading for the entry for § 1.1297–3 and adding ''section 1297(d) PFIC'' in its place.

■ **Par. 13.** Section 1.1297–3 is amended by:

■ 1. Revising the section heading;

■ 2. Removing the language ''section 1297(e)'' in paragraph (a) and adding ''section 1297(d)'' in its place;

■ 3. Removing the language ''section 1297(e) PFIC'' in paragraphs (b)(1) and (2) and adding ''section 1297(d) PFIC'' in its place;

■ 4. Removing the language ''section 1297(e)(2)'' in paragraph (b)(2) and adding ''section 1297(d)(2)'' in its place;

■ 5. Removing the language ''section 1297(e) PFIC'' in paragraphs (c)(1) and (2) and adding ''section 1297(d) PFIC'' in its place;

■ 6. Removing the language ''section 1297(e)(2)'' in paragraph (c)(2) and adding ''section 1297(d)(2)'' in its place;

■ 7. Removing the language ''the post-1986 undistributed earnings, within the meaning of section 902(c)(1) (determined without regard to section 902(c)(3))'' in paragraphs (c)(3)(i)(A) and (B) and adding ''the amount of the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986)'' in its place; and

■ 8. Removing the language ''section 1297(e) PFIC'' in paragraphs (d) and (e)(1) and adding ''section 1297(d) PFIC'' in its place.

The revision reads as follows:

§ 1.1297–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(d) PFIC.

* * * * *

■ **Par. 14.** Section 1.1298–1 is amended by:

■ 1. Revising paragraphs (b)(1), (b)(2) heading, (b)(2)(i) introductory text, and (b)(2)(ii);

■ 2. Removing paragraph (c)(6);

■ 3. Redesignating paragraphs (c)(7) through (9) as paragraphs (c)(6) through (8), respectively;

■ 4. Removing the language ''Except as provided in paragraph (h)(2) of this section'' in paragraph (h)(1) and adding ''Except as provided in paragraph (h)(2) or (3) of this section'' in its place;

■ 5. Removing the language ''Paragraph (c)(9)'' in paragraph (h)(2) and adding ''Paragraph (c)(8)'' in its place; and

■ 6. Adding paragraph (h)(3).

The revisions and addition read as follows:

§ 1.1298–1 Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company.

* * * * *

(b) * * * (1) *General rule.* Except as otherwise provided in this section, a United States person that is a shareholder of a PFIC (as defined in § 1.1291–1(b)(7)) must complete and file Form 8621, ''Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund'' (or successor form), under section 1298(f) and this section for the PFIC if, during the shareholder's taxable year, the shareholder—

(i) Directly owns stock of the PFIC; or

(ii) Is an indirect shareholder under § 1.1291–1(b)(8) that holds any interest in the PFIC through one or more entities, domestic or foreign, each of which is not a shareholder of such PFIC within the meaning of § 1.1291–1(b)(7).

(2) *Additional requirement to file for certain beneficiaries of domestic estates and domestic nongrantor trusts*—(i) *General rule.* Except as otherwise provided in this section, an indirect shareholder that owns an interest in a PFIC by reason of an interest in a domestic estate or domestic nongrantor trust (as described in § 1.1291–

1(b)(8)(iii)(C)) also must file Form 8621 (or successor form) with respect to the PFIC under section 1298(f) and this section if, during the indirect shareholder's taxable year, the indirect shareholder is—

* * * * *

(ii) *Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions.* The filing requirements under paragraph (b)(2)(i) of this section do not apply with respect to an interest in a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) or (D) of this section if the domestic nongrantor trust or domestic estate through which the indirect shareholder owns such interest in the PFIC timely files Form 8621 (or successor form) with respect to the PFIC under paragraph (b)(1) of this section.

* * * * *

(h) * * *

(3) Paragraphs (b)(1) and (b)(2)(i) and (ii) of this section apply to taxable years of shareholders beginning on or after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. For taxable years of shareholders beginning before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], see § 1.1298–1(b)(1) and (b)(2)(i) and (ii) as in effect and contained in 26 CFR part 1, as revised April 1, 2021.

§ 1.1298–3 [Amended]

■ **Par. 15.** Section 1.1298–3 is amended by removing the language ''the post-1986 undistributed earnings, within the meaning of section 902(c)(1) (determined without regard to section 902(c)(3))'' in paragraph (c)(3)(i) and adding ''the amount of the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986)'' in its place.

■ **Par. 16.** Section 1.1411–10 is amended by:

■ 1. Removing paragraph (g)(2)(iii);

■ 2. Revising paragraph (g)(3);

■ 3. Removing paragraph (g)(4)(ii);

■ 4. Redesignating paragraphs (g)(4)(iii) and (iv) as paragraphs (g)(4)(ii) and (iii), respectively; and

■ 5. Revising newly redesignated paragraph (g)(4)(iii) and paragraph (i).

The revisions read as follows:

§ 1.1411–10 Controlled foreign corporations and passive foreign investment companies.

* * * * *

(g) * * *

(3) *Who may make the election*—(i) *In general.* An individual, estate, or trust may make an election under paragraph (g) of this section with respect to each CFC or QEF that it holds directly or indirectly through one or more entities, each of which is a foreign entity or a domestic pass-through entity. The election, if made, for an estate or trust must be made by the fiduciary of the estate or trust.

(ii) *Special rule for certain S corporations.* For taxable years in which an S corporation elects to apply § 1.958–1(e), the S corporation may make an election under this paragraph (g)(3)(ii) with respect to each CFC that it holds, directly or indirectly. If an S corporation does not make the election under this paragraph (g)(3)(ii), the election may be made by its shareholders that are individuals, estates, or trusts instead.

(4) * * *

(iii) *Time for making election.* The election under paragraph (g) of this section must be made in the manner prescribed by forms, instructions, or in other guidance on the individual's, estate's, or trust's original or amended return for the taxable year for which the election is made. An election can be made on an amended return only if the taxable year for which the election is made, and all taxable years that are affected by the election, are not closed by the period of limitations on assessments under section 6501. Extensions of time to make the election are not available under any other provision of the law, including § 301.9100 of this chapter.

* * * * *

(i) *Applicability dates.* Except as otherwise provided in this paragraph (i), this section applies to taxable years beginning after December 31, 2013. However, taxpayers may apply this section to taxable years beginning after December 31, 2012, in accordance with § 1.1411–1(f). Paragraphs (g)(3) and (g)(4)(iii) of this section apply to taxable years beginning on or after [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**]. For taxable years beginning before [date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**], see paragraphs (g)(3) and (g)(4)(iii) of this section as in effect and contained in 26 CFR part 1, as revised April 1, 2021.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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