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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2020-0718; Project Identifier 2019-CE-045-AD; Amendment 39-21343; AD 2020-25-01]

RIN 2120-AA64

Airworthiness Directives; Textron Aviation, Inc. Airplanes (Type Certificate Previously Held by Beechcraft Corporation)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Textron Aviation Inc. (Textron) (type certificate previously held by Beechcraft Corporation) Models F90, 65-90, 65-A90, B90, C90, H90 (T-44A), E90, 65-A90-1 (JU-21A, U-21A, RU-21A, RU-21D, U-21G, RU-21H), 65-A90-2 (RU-21B), 65-A90-3 (RU-21C), 65-A90-4 (RU-21E, RU-21H), 99, 99A, 99A (FACH), A99, A99A, B99, C99, 100, A100 (U-21F), and B100 airplanes. This AD was prompted by reports of fatigue cracks in the lower forward wing fitting. This AD requires a one-time inspection for the presence of washer part number (P/N) 90-380058-1 on the left-hand (LH) and right-hand (RH) lower forward wing bolt and, if applicable, removing washer P/N 90-380058-1, inspecting the wing fitting, bolt, and nut, replacing the wing fitting if it is cracked, and replacing the washer with washer P/N 90-380019-1. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 11, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 11, 2021.

ADDRESSES: For service information identified in this final rule, contact Textron Aviation Inc., P.O. Box 7706, Wichita, KS 67277; phone: 316-517-5800; internet: <https://txtav.com/>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust St., Kansas City, MO 64106. For information on the availability of this material at the FAA, call 816-329-4148. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0718.

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-2020-0718; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is Docket Operations, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Brian C. Adamson, Aviation Safety Engineer, Wichita ACO Branch, AIR-7K3, FAA, 1801 Airport Rd, Wichita, KS 67209; phone: 316-946-4193; fax: 316-946-4107; email: brian.adamson@faa.gov or Wichita-COS@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Textron (type certificate previously held by Beechcraft Corporation) Models F90, 65-90, 65-A90, B90, C90, H90 (T-44A), E90, 65-A90-1 (JU-21A, U-21A, RU-21A, RU-21D, U-21G, RU-21H), 65-A90-2 (RU-21B), 65-A90-3 (RU-21C), 65-A90-4 (RU-21E, RU-21H), 99, 99A, 99A (FACH), A99, A99A, B99, C99, 100, A100 (U-21F), and B100 airplanes. The NPRM published in the **Federal Register** on July 29, 2020 (85 FR 45545).

The NPRM was prompted by Textron receiving reports of fatigue cracks in the lower forward wing fitting on two airplanes. Investigation revealed that

installing washer P/N 90-380058-1 on the wing bolt will cause a premature torque indication. This washer may have been installed as part of kit 101-4024-3 on Models F90, 65-90, 65-A90, B90, C90, H90 (T-44A), E90, 65-A90-1 (JU-21A, U-21A, RU-21A, RU-21D, U-21G, RU-21H), 65-A90-2 (RU-21B), 65-A90-3 (RU-21C), 65-A90-4 (RU-21E, RU-21H), 99, 99A, 99A (FACH), A99, A99A, B99, C99, 100, A100 (U-21F), and B100 airplanes, or as part of kit 90-4077-1 on Models 65-90, 65-A90, 65-A90-1 (JU-21A, U-21A, RU-21A, RU-21D, U-21G, RU-21H), 65-A90-2 (RU-21B), 65-A90-3 (RU-21C), 65-A90-4 (RU-21E, RU-21H), B90, C90, and E90 airplanes. Under-torque of the wing bolt causes a reduced clamping force that changes the load path reacted by the RH and LH lower forward wing fitting.

In the NPRM, the FAA proposed to require a one-time inspection for the presence of washer P/N 90-380058-1 on the LH and RH lower forward wing bolt and, if applicable, removing washer P/N 90-380058-1, inspecting the wing fitting, bolt, and nut, replacing the wing fitting if it is cracked, and replacing the washer with washer P/N 90-380019-1. This condition, if not addressed, could result in fatigue cracks that lead to failure of the forward lower wing fitting, wing separation, and loss of airplane control.

Comments

The FAA received one comment from an individual commenter. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request Change to Applicability

An individual commenter requested that the AD identify the applicable airplanes by serial number. The commenter stated that on the Beech Model C90A serial number LJ-1450 airplane, the lower front wing connections are designed as shear fittings with shear bolts, and therefore the washers are not affected. The FAA disagrees. The AD, as proposed, clearly lists the applicable airplane models and serial numbers. The FAA responded to the commenter by email and advised that the AD, as proposed, would not apply to the Model C90A. A copy of the comment and the FAA's response is in the AD docket.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Beechcraft Mandatory Service Letter MTL-57-01, Revision 1, dated September 19, 2018. The service information contains procedures for a one-time inspection for the presence of washer P/N 90-380058-1 on the LH and RH lower forward wing bolt and, if applicable, removing washer

P/N 90-380058-1; inspecting the wing fitting, bolt, and nut; replacing the wing fitting if it is cracked; and replacing the washer with washer P/N 90-380019-1. 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.

Differences Between This AD and the Service Information

The service information specifies inspecting within 200 flight hours or 12 months, whichever occurs earlier. This AD would require inspecting within the next 200 flight hours or 12 months, whichever occurs later.

The service information applies to Models A100A and A100C airplanes,

and to Model F90 with S/N LA-1. This AD would not apply to these airplanes because they do not have an FAA type certificate.

This AD would apply to military Models T-44A, JU-21A, RU-21A, RU-21B, RU-21C, RU-21D, RU-21E, RU-21H, U-21A, U-21F, U-21G, and FACH airplanes, because these models have a civil counterpart that is subject to the unsafe condition. The service information does not apply to all of these military models.

Costs of Compliance

The FAA estimates that this AD will affect 1,319 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for washer P/N 90-380058-1 (LH Wing Fitting).	0.3 work-hour × \$85 per hour = \$25.50	Not applicable	\$25.50	\$33,634.50
Inspection for washer P/N 90-380058-1 (RH Wing Fitting).	0.3 work-hour × \$85 per hour = \$25.50	Not applicable	25.50	33,634.50

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspection. The FAA has no way of determining the number of

airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
RH Wing bolt, washer, and nut removal	8 work-hours × \$85 per hour = \$680	\$335	\$1,015
LH Wing bolt, washer, and nut removal	8 work-hours × \$85 per hour = 680	\$335	1,015
Inspection of RH Lower Forward Wing Fitting	2 work-hours × \$85 per hour = 170	Not applicable	170
Inspection of LH Lower Forward Wing Fitting	2 work-hours × \$85 per hour = 170	Not applicable	170
Removal and Replacement of P/N 50-120073-8 RH Lower Forward Wing Fitting.	150 work-hours × \$85 per hour = 12,750	\$7,297.85	20,047.85
Removal and Replacement of P/N 50-120073-7 LH Lower Forward Wing Fitting.	150 work-hours × \$85 per hour = 12,750	\$11,812.56	24,562.56

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

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–25–01 **Textron Aviation, Inc., (Type Certificate Previously Held by Beechcraft Corporation):** Amendment 39–21343; Docket No. FAA–2020–0718; Project Identifier 2019–CE–045–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 11, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Textron Aviation Inc., (Textron) (type certificate previously held by Beechcraft Corporation) airplanes, certificated in any category, identified in table 1 to paragraph (c) of this AD:

Models	Serial Numbers (S/Ns)
F90	LA-2 through LA-225
65-90, 65-A90, B90, C90	All S/Ns
H90 (T-44A)	LL-1 through LL-61
E90	LW-1 through LW-347
65-A90-1 (JU-21A, U-21A, RU-21A, RU-21D, U-21G, RU-21H)	LM-1 through LM-144
65-A90-2 (RU-21B)	LS-1, LS-2, LS-3
65-A90-3 (RU-21C)	LT-1 and LT-2
65-A90-4 (RU-21E, RU-21H)	LU-1 through LU-16
99, 99A, 99A (FACH), A99, A99A, B99, C99	U-1 through U-239
100, A100 (U-21F)	B-1 through B-247
B100	BE-1 through BE-137

Table 1 to paragraph (c)

(d) Subject

Joint Aircraft System Component (JASC): 5700, Wings.

(e) Unsafe Condition

This AD was prompted by information provided by Textron that a washer assembly may provide premature torque indication that could lead to cracking of the wing fitting. The FAA is issuing this AD to prevent such fatigue cracks. The unsafe condition, if not addressed, could result in failure of the forward lower wing fitting, which could lead to wing separation and loss of airplane control.

(f) Compliance

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

(g) Action

(1) Within the next 200 flight hours after the effective date of this AD or within 12 months after the effective date of this AD, whichever occurs later, inspect each washer assembly attached to the left and right lower forward wing bolts and remove all part number 90–380058–1 washers in accordance with the Accomplishment Instructions, paragraphs 3 through 5, of Beechcraft Mandatory Service Letter MTL–57–01, Revision 1, dated September 19, 2018 (MTL–57–01, Revision 1). In all locations where a

washer part number 90–380058–1 was removed, do the following:

(i) Inspect the bolt, nut, and fitting in accordance with the Accomplishment Instructions, paragraph 6, of MTL–57–01, Revision 1. If there is a crack in the fitting, replace the fitting before further flight.

(ii) Install a part number 90–380019–1 washer in accordance with the Accomplishment Instructions, paragraph 7, of MTL–57–01, Revision 1.

(2) As of the effective date of this AD, do not install washer part number 90–380058–1 on any airplane listed in table 1 to paragraph (c) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Brian C. Adamson, Aviation Safety Engineer, Wichita ACO Branch, AIR–7K3, FAA, 1801 Airport Rd., Wichita, KS 67209; phone: 316–946–4193; fax: 316–946–4107; email: brian.adamson@faa.gov or Wichita-COS@faa.gov.

(2) Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(i) Related Information

For more information about this AD, contact Brian C. Adamson, Aviation Safety Engineer, Wichita ACO Branch, AIR–7K3, FAA, 1801 Airport Rd., Wichita, KS 67209; phone: 316–946–4193; fax: 316–946–4107; email: brian.adamson@faa.gov or Wichita-COS@faa.gov.

(j) Material Incorporated by Reference

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

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

(i) Beechcraft Mandatory Service Letter MTL–57–01, Revision 1, dated September 19, 2018.

(ii) [Reserved]

(3) For Beechcraft service information identified in this AD, contact Textron Aviation Inc., P.O. Box 7706, Wichita, KS 67277; phone: 316–517–5800; internet: <https://txtav.com/>.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: fedreg.legal@nara.gov or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on November 23, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020-26773 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2020-1104; Project Identifier MCAI-2020-01421-P; Amendment 39-21347; AD 2020-25-05]

RIN 2120-AA64

Airworthiness Directives; Hoffmann GmbH & Co. KG Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Hoffmann GmbH & Co. KG (Hoffmann) model HO-V 72 propellers. This AD was prompted by reports of cracks at different positions on two affected propeller hubs. This AD requires amending the existing aircraft flight manual (AFM) with abnormal propeller vibration instructions. This AD requires visual inspection and non-destructive test (NDT) inspection of the propeller hub and, depending on the results of the inspections, replacement of the propeller hub with a part eligible for installation. This AD also requires replacement of the propeller hub before exceeding 30 years since the date of manufacture or within 30 days after the effective date of this AD, whichever occurs later. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 22, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 22, 2020.

The FAA must receive comments on this AD by January 21, 2021.

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 final rule, contact Hoffmann Propeller GmbH & Co. KG, Sales and Service, K pferlingstrasse 9, 83022, Rosenheim, Germany; phone: +49 (0) 8031 1878 0; fax: +49 (0) 8031 1878 78; email: info@hoffmann-prop.com; website: <https://hoffmann-prop.com/>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238-7759. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1104.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1104; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Michael Schwetz, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7761; fax: (781) 238-7199; email: michael.schwetz@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2020-0226-E, dated October 16, 2020 (referred to after this as “the MCAI”), to address an unsafe condition for the specified products. The MCAI states:

Cracks have been reported at different positions on two affected parts, both installed on Slingsby T67 “Firefly” aeroplanes. One crack was found during scheduled inspection, the other crack during an unscheduled inspection after abnormal

vibrations occurred. Both cases are under investigation by Hoffmann Propeller.

This condition, if not detected and corrected, could lead to in-flight propeller detachment, possibly resulting in damage to the airplane and/or injury to persons on the ground.

To address this potential unsafe condition, Hoffmann issued the SB [service bulletin], providing applicable instructions.

For the reasons described above, this [EASA] AD requires inspections of affected parts and, depending on findings, replacement, and introduces a life limit for affected parts. This [EASA] AD also requires, for certain aeroplanes, amendment of the applicable Aircraft Flight Manual (AFM).

You may obtain further information by examining the MCAI in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1104.

FAA’s Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 14 CFR Part 51

The FAA reviewed Hoffmann Propeller GmbH & Co. KG Service Bulletin SB E53, Rev. B, dated October 14, 2020. This service information specifies procedures for visual and NDT inspections of the propeller hub for cracks. 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

ADDRESSES.

AD Requirements

This AD requires amending the existing AFM with abnormal propeller vibration instructions. This AD also requires visual inspection and NDT inspection of the propeller hub and, depending on the results of the inspections, replacement of the propeller hub with a part eligible for installation. This AD also requires replacement of the propeller hub before exceeding 30 years since the date of manufacture or within 30 days after the effective date of this AD, whichever occurs later.

Differences Between the AD and the MCAI

EASA AD 2020-0226-E, dated October 16, 2020, applies to Hoffmann HO-V 72 propellers with propeller hub HO-V 72 () ()-()-() that have been used or are expected to be used for aerobatic maneuvers. This AD applies to all Hoffmann model HO-V 72 propellers regardless of their use.

EASA AD 2020-0226-E, dated October 16, 2020, defines the life of the propeller hub as 30 years since the first installation on the airplane. This AD defines the life of the propeller hub as 30 years since the date of manufacture because the installation history of the propeller might be unknown.

Interim Action

The FAA considers this AD interim action. This unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule. During a scheduled inspection, a crack was found by an operator on a propeller hub. A second crack was found on another propeller hub during an unscheduled inspection by an operator after abnormal vibrations occurred in-flight. Hoffmann Propeller

immediately issued service information instructing operators to visually inspect the hub for cracks before the next flight while the cause of the cracks are under investigation.

A crack in the propeller hub can result in the loss of a propeller blade, resulting in an imbalance in the entire engine which can render the aircraft uncontrollable. The FAA considers a crack in the propeller hub an urgent safety issue that requires an immediate action to avoid potential loss of the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include the docket number FAA-2020-1104 and Project Identifier MCAI-2020-01421-P at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <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 final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Michael Schwetz, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 35 propellers installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Amend AFM	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$2,975
Visually inspect propeller hub	1 work-hour × \$85 per hour = \$85	0	85	2,975
NDT inspect propeller hub	8 work-hours × \$85 per hour = \$680	0	680	23,800

The FAA estimates the following costs to do any necessary replacement that would be required based on the

results of the inspections. The agency has no way of determining the number

of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace propeller hub	5 work-hours × \$85 per hour = \$425	\$1,600	\$2,025

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–25–05 Hoffmann GmbH & Co. KG:
Amendment 39–21347; Docket No. FAA–2020–1104; Project Identifier MCAI–2020–01421–P.

(a) Effective Date

This airworthiness directive (AD) is effective December 22, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Hoffmann GmbH & Co. KG (Hoffmann) model HO–V 72 propellers.

(d) Subject

Joint Aircraft System Component (JASC) Code 6114, Propeller Hub Section.

(e) Unsafe Condition

This AD was prompted by reports of cracks at different positions on two affected propeller hubs. The FAA is issuing this AD to prevent failure of the propeller hub. The unsafe condition, if not addressed, could result in release of the propeller, damage to the airplane, and injury to persons on the ground.

(f) Compliance

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

(g) Required Actions

(1) Before the next flight after the effective date of this AD, amend the existing aircraft flight manual by inserting the procedure: “Abnormal propeller vibrations: As applicable, reduce engine RPM.”

(2) Before the next flight after the effective date of this AD, and thereafter, before the next flight after any flight where abnormal propeller vibrations have been experienced, visually inspect propeller hub HO–V 72 () ()–()–() for cracks using paragraph 2.1 of Hoffmann Propeller GmbH & Co. KG Service Bulletin SB E53, Rev. B, dated October 14, 2020 (the SB).

(3) Within 20 flight hours after the effective date of this AD, perform a non-destructive test (NDT) inspection of propeller hub HO–V 72 () ()–()–() using paragraph 2.3 of the SB.

(4) If, during any inspection required by paragraph (g)(2) or (3) of this AD, any crack is detected, replace propeller hub HO–V 72 () ()–()–() with a part eligible for installation.

(5) During each overhaul of propeller hub HO–V 72 () ()–()–() after the effective date of this AD, perform an NDT inspection using paragraph 2.3 of the SB.

(6) Before exceeding 30 years since the date of manufacture, or within 30 days after the effective date of this AD, whichever occurs later, replace propeller hub HO–V 72 () ()–()–() with a part eligible for installation.

(h) Definition

For the purpose of this AD, a “part eligible for installation” is a propeller hub HO–V 72 () ()–()–() with zero hours time since new or a propeller hub HO–V 72 () ()–()–() that has accumulated fewer than 30 years since the date of manufacture and has passed an NDT inspection using paragraph 2.3 of the SB.

(i) Non-Required Actions

(1) Sending the propeller to Hoffmann for investigation, as contained in paragraph 2.1 of the SB, is not required by this AD.

(2) Reporting propeller hubs with cracks to Hoffmann, as contained in paragraph 2.3 of the SB, is not required by this AD.

(j) Credit for Previous Actions

You may take credit for the initial visual inspection and NDT inspection of the propeller hub required by paragraphs (g)(2), (3), and (5) of this AD if you performed any of these actions before the effective date of this AD using Hoffmann Propeller GmbH & Co. KG SB E53 Rev. A, dated October 9, 2020.

(k) Special Flight Permit

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a service facility to perform the NDT inspection. Special flight permits are prohibited to perform the visual inspection of the propeller hub.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information.

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

(m) Related Information

(1) For more information about this AD, contact Michael Schwetz, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7761; fax: (781) 238–7199; email: michael.schwetz@faa.gov.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0226–E, dated October 16, 2020, for more

information. You may examine the EASA AD in the AD docket at <https://www.regulations.gov> by searching for and locating it in Docket No. FAA–2020–1104.

(n) Material Incorporated by Reference

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

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

(i) Hoffmann Propeller GmbH & Co. KG (Hoffmann) Service Bulletin SB E53, Rev. B, dated October 14, 2020.

(ii) [Reserved]

(3) For Hoffmann service information identified in this AD, contact Hoffmann Propeller GmbH & Co. KG, Sales and Service, K pferlingstrasse 9, 83022, Rosenheim, Germany; phone: +49 (0) 8031 1878 0; fax: +49 (0) 8031 1878 78; email: info@hoffmann-prop.com; website: <https://hoffmann-prop.com/>.

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: fedreg.legal@nara.gov, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on November 30, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–26765 Filed 12–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0810; Airspace Docket No. 19–ANM–101]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Helena, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace at Helena Regional Airport. This action also modifies the Class E airspace, designated as a surface area. Additionally, this action establishes Class E airspace, designated as an extension to a Class D or Class E surface area. Further, this action modifies the

Class E airspace, extending upward from 700 feet above the surface. Also, this action modifies the Class E airspace extending upward from 1,200 feet above the surface. This action removes the Helena VORTAC from the airspace legal descriptions. Lastly, this action implements administrative corrections to the airspaces' legal descriptions.

DATES: Effective 0901 UTC, February 25, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, 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 7400.11E at NARA, email fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT:

Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

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 modifies Class D and Class E airspace at Helena Regional Airport, Helena, MT, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 59700; September 23, 2020) for Docket No. FAA–2020–00810 to modify Class D and Class E airspace at Helena Regional Airport, Helena, MT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment, that is not germane to the proposed airspace action, was received.

Class D, E2, E4, and E5 airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations part 71 modifies the Class D airspace at Helena Regional Airport, Helena, MT. The action modifies the Class D airspace by adding extensions to the east and west of the airport, to properly contain IFR departures to 700 feet above the surface. The airspace area is described as follows: That airspace extending upward from the surface to and including 6,400 feet within a 4.4-mile radius of the airport, and within 2 miles each side of the 091° bearing from the airport, extending from the 4.4-mile radius to 5.2 miles east of the airport, and within 2 miles each side of 292° bearing from the airport, extending from the 4.4-mile radius to 5.8 miles west of Helena Regional 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. This action also modifies the Class E airspace, designated as a surface area, to be coincident with the new Class D dimensions. The airspace

area is as follows: That airspace extending upward from the surface within a 4.4-mile radius of the airport, and within 2 miles each side of the 091° bearing from the airport, extending from the 4.4-mile radius to 5.2 miles east of the airport, and within 2 miles each side of 292° bearing from the airport, extending from the 4.4-mile radius to 5.8 miles west of Helena Regional 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.

Additionally, this action establishes Class E airspace, designated as an extension to a Class D or Class E surface area. This airspace area is designed to contain IFR aircraft descending below 1,000 feet above the surface. The airspace area is described as follows: That airspace extending upward from the surface within an area bounded by a line beginning at lat. 46°34'18.57" N, Long. 111°51'30.319" W, to lat. 46°38'5.89" N, Long. 111°51'24.53" W, to lat. 46°37'12.53" N, Long. 111°45'24.67" W, to lat. 46°32'22.72" N, Long. 111°46'31.44" W, to lat. 46°33'24.13" N, Long. 111°54'20.01" W, then counter-clockwise along, the 4.4-mile radius of the airport to lat. 46°34'20.01" N, Long. 111°53'22.03" W, then to the point of beginning, and within an area bounded by a line beginning at lat. 46°38'39.95" N, Long. 112°06'47.50" W, to lat. 46°36'47.49" N, Long. 112°07'53.41" W, to lat. 46°37'22.52" N, Long. 112°11'37.80" W, to lat. 46°39'19.40" N, Long. 112°10'58.64" W, then to the point of beginning west of Helena Regional Airport.

Further, this action modifies the Class E airspace extending upward from 700 feet above the surface. The action properly sizes the airspace to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. The airspace area is described as follows: That airspace extending upward from 700 feet above the surface within an 8.3-mile radius of the airport, and within 1 mile each side of the 103° bearing from the airport, extending from the 8.3-mile radius to 10.7 miles east of the airport, and within 1.8 miles each side of the 281° bearing from the airport, extending from the 8.3-mile radius to 18.1 miles west of Helena Regional Airport. This action also modifies the Class E airspace extending upward from 1,200 feet above the surface to properly contain IFR aircraft transitioning to/from the terminal and en route environments. The airspace area is described as

follows: That airspace extending upward from 1,200 feet above the surface within a 36-mile radius of Helena Regional Airport. The action also removes the Helena VORTAC and all references to the VORTAC from the Class D, E2, and E5 legal descriptions. The navigational aid is not needed to define the airspace. Removal of the navigational aid allows the airspace to be defined from a single reference point which simplifies how the airspace is described. The action also updates the airport's geographic coordinates to match the FAA database. The coordinates should read lat. 46°36'24" N, Long. 111°59'0.0" W. Additionally, the term "Airport/Facility Directory" in the last sentence of the Class D and Class E2 airspace legal descriptions is outdated, the term is updated to "Chart Supplement". FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 5000. Class D Airspace.

* * * * *

ANM MT D Helena, MT [Amended]

Helena Regional Airport, MT

(Lat. 46°36'24" N, long. 111°59'0.0" W)

That airspace extending upward from the surface to and including 6,400 feet within a 4.4-mile radius of the airport, and within 2 miles each side of the 091° bearing from the airport, extending from the 4.4-mile radius to 5.2 miles east of the airport, and within 2 miles each side of 292° bearing from the airport, extending from the 4.4-mile radius to 5.8 miles west of Helena Regional 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 Airspace Areas Designated as a Surface Area.

* * * * *

ANM MT E2 Helena, MT [Amended]

Helena Regional Airport, MT

(Lat. 46°36'24" N, long. 111°59'0.0" W)

That airspace extending upward from the surface within a 4.4-mile radius of the airport, and within 2 miles each side of the 091° bearing from the airport, extending from the 4.4-mile radius to 5.2 miles east of the airport, and within 2 miles each side of 292° bearing from the airport, extending from the 4.4-mile radius to 5.8 miles west of Helena Regional 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.

Paragraph 6004. Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM MT E4 Helena, MT [New]

Helena Regional Airport, MT

(Lat. 46°36'24" N, long. 111°59'0.0" W)

That airspace extending upward from the surface within an area bounded by a line beginning at Lat. 46°34'18.57" N, long. 111°51'30.319" W, to Lat. 46°38'5.89" N, Long. 111°51'24.53" W, to Lat. 46°37'12.53" N, long. 111°45'24.67" W, to Lat. 46°32'22.72" N, Long. 111°46'31.44" W, to Lat. 46°33'24.13" N, Long. 111°54'20.01" W, then counter-clockwise along the 4.4-mile radius of the airport to Lat. 46°34'20.01" N, long. 111°53'22.03" W, then to the point of beginning, and within an area bounded by a line beginning at Lat. 46°38'39.95" N, long. 112°06'47.50" W, to Lat. 46°36'47.49" N, long. 112°07'53.41" W, to Lat. 46°37'22.52" N, long. 112°11'37.80" W, to Lat. 46°39'19.40" N, long. 112°10'58.64" W, then to the point of beginning west of Helena Regional Airport.

Paragraph 6005. Class E Airspace Areas Extending Upward from 700 feet or more above the Surface of the Earth.

* * * * *

ANM MT E5 Helena, MT [Amended]

Helena Regional Airport, MT

(Lat. 46°36'24" N, long. 111°59'0.0" W)

That airspace extending upward from 700 feet above the surface within an 8.3-mile radius of the airport, and within 1 mile each side of the 103° bearing from the airport, extending from the 8.3-mile radius to 10.7 miles east of the airport, and within 1.8 miles each side of the 281° bearing from the airport, extending from the 8.3-mile radius to 18.1 miles west of the airport; and that airspace extending upward from 1,200 feet above the surface within a 36-mile radius of Helena Regional Airport.

Issued in Seattle, Washington, on December 1, 2020.

B. G. Chew,

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

[FR Doc. 2020-26816 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT-OST-2019-0182]

RIN 2105-AE72

Defining Unfair or Deceptive Practices

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT or Department) is issuing a final rule codifying its longstanding definitions for the terms “unfair” and “deceptive” in the Department’s regulations implementing its aviation consumer protection statute. The final rule also describes the

Department’s procedural requirements for its rulemaking and enforcement actions when based on the Department’s authority to prohibit unfair or deceptive practices. Most of the Department’s aviation consumer protection regulations, such as the Department’s rules on overbooking, are based on the Department’s authority to prohibit unfair or deceptive practices. This rule is intended to provide regulated entities and other stakeholders with greater clarity and certainty about the Department’s interpretation of unfair or deceptive practices and the Department’s process for making such determinations in the context of aviation consumer protection rulemaking and enforcement actions.

DATES: Effective on January 6, 2021.

FOR FURTHER INFORMATION CONTACT:

Robert Gorman, Kimberly Graber, or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202-366-9342, 202-366-7152 (fax); robert.gorman@dot.gov; kimberly.graber@dot.gov; blane.workie@dot.gov (email).

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

Much of the background information presented here also appears in the preamble to the Department’s Notice of Proposed Rulemaking on Defining Unfair and Deceptive Practices published on February 28, 2020.¹ We have presented background information again here to assist the public in understanding the issues involved.

A. The Department’s Unfair and Deceptive Practices Statute

The Department’s authority to regulate unfair and deceptive practices in air transportation or the sale of air transportation is found at 49 U.S.C. 41712 (“Section 41712”) in conjunction with its rulemaking authority under 49 U.S.C. 40113, which states that the Department may take action that it considers necessary to carry out this part, including prescribing regulations. Section 41712 gives the Department the authority to investigate and decide whether an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. Under Section 41712, after notice and an opportunity for a hearing, the Department has the authority to issue orders to stop an unfair or deceptive practice. A different

¹ “Defining Unfair or Deceptive Practices,” 85 FR 11881 (February 28, 2020).

statute, 49 U.S.C. 46301, gives the Department the authority to issue civil penalties for violations of Section 41712 or for any regulation issued under the authority of Section 41712.

B. Request for Regulatory Reform

On February 24, 2017, President Trump signed Executive Order 13777, Enforcing the Regulatory Reform Agenda, which requires each Federal agency to establish a Regulatory Reform Task Force to evaluate existing regulations, and make recommendations for their repeal, replacement, or modification. As part of this process, the Department is directed to seek input and assistance from entities significantly affected by its regulations. On October 1, 2017, the Department issued a Notice of Regulatory Reform seeking written input from the public on existing regulations and other actions that are good candidates for repeal, replacement, or modification.² In response to the Notice, Airlines for America (A4A), an airline trade association, urged the Department to adopt policies defining unfairness and deception in Section 41712 consistent with principles articulated in Federal Trade Commission (FTC) and Federal court precedent interpreting those terms.³ A4A also urged the Department to adopt various procedures which would, in its view, ensure that the Department’s enforcement and rulemaking activities were rooted in fairness, due process, and an adequate factual foundation.

C. Department’s Comprehensive Update of Rulemaking and Enforcement Procedures

On December 27, 2019, the Department issued a comprehensive update and consolidation of its procedural requirements for the Department’s rulemaking and enforcement actions.⁴ This update reflects the Department’s policy that regulations should be straightforward and clear, incorporate best practices for economic analyses, and provide for appropriate public participation.⁵ It also reflects the Department’s policy that enforcement actions should satisfy principles of due process and remain

² “Notification of Regulatory Review,” 82 FR 45750 (October 1, 2017).

³ See Comment of A4A, Docket DOT-OST-2017-0069-2753, available at www.regulations.gov.

⁴ “Administrative Rulemaking, Guidance, and Enforcement Procedures,” 84 FR 71714 (December 27, 2019), amending 49 CFR part 5 and other provisions.

⁵ 84 FR 71718-71826.

lawful, reasonable, and consistent with Administration policy.⁶

D. Summary of Notice of Proposed Rulemaking (NPRM)

On February 28, 2020, the Department published an NPRM proposing to define the terms “unfair” and “deceptive” found in Section 41712, the Department’s aviation consumer protection statute. The NPRM also proposed a series of amendments to the Department’s aviation consumer protection procedures with respect to both regulation and enforcement. The proposals were issued to provide greater clarity, transparency, and due process in future aviation consumer protection rulemakings and enforcement actions.

By way of background, the Department described the origin of section 41712 and explained how it was modeled on Section 5 of the Federal Trade Commission (FTC) Act. The Department explained that while Section 5 vests the FTC with broad authority to prohibit unfair or deceptive practices in most industries, Congress granted the Department the exclusive authority to prohibit unfair or deceptive practices of air carriers and foreign air carriers. The Department noted that DOT and FTC share the authority to prohibit unfair or deceptive practices by ticket agents in the *sale* of air transportation.

Next, the Department explained that in December 1980, the FTC issued a Policy Statement to Congress, which articulated general principles drawn from FTC decisions and rulemakings that the Commission applies in enforcing its mandate to address unfairness under the FTC Act.⁷ These principles were applied in FTC enforcement cases and rulemakings, and approved by reviewing Federal courts.⁸ The FTC explained that unjustified consumer injury is the primary focus of the FTC Act. This concept contains three basic elements. An act or practice is unfair where it: (1) Causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers; and (3) is not outweighed by countervailing benefits

to consumers or to competition. The FTC also considers public policy, as established by statute, regulation, or judicial decisions, along with other evidence in determining whether an act or practice is unfair.

These principles are now reflected in the FTC Act itself. In 1994, Congress enacted 15 U.S.C. 45(n), which states that the FTC shall have no enforcement authority or rulemaking authority to declare an act or practice unfair unless it is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. Congress further provided in Section 45(n) that the FTC could rely on public policy, along with other evidence, for making a determination of unfairness, but public policy may not be the primary basis of its decision.

Next, the Department explained that in 1983, the FTC issued a Policy Statement on Deception.⁹ Like the 1980 Policy Statement on Unfairness, the 1983 Policy Statement clarified the general principles that the FTC applies in enforcing its mandate to address deception under the FTC Act. As explained in the Policy Statement, an act or practice is deceptive where: (1) A representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer’s interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and (3) the misleading representation, omission, or practice is material.

In the NPRM, the Department proposed to adopt definitions of “unfair” and “deceptive” that echo FTC precedent. The Department explained that adopting these definitions would simply codify existing practice and would not reflect a change of policy, because the Department’s Office of Aviation Consumer Protection (formerly known as the Office of Aviation Enforcement and Proceedings), a unit within the Office of the General Counsel that enforces aviation consumer protection requirements, has often explicitly relied on those definitions in its enforcement orders.

Next, the Department proposed a set of procedural rules that would govern the Department’s future discretionary rulemaking and enforcement efforts in the area of aviation consumer protection. With respect to rulemaking actions, the Department proposed three measures. First, future rulemakings

declaring certain practices to be “unfair” or “deceptive” would use the Department’s proposed definitions of those terms.¹⁰ In prior rulemakings, the Department tended to make a conclusory statement that a practice was unfair or deceptive and did not provide its reasoning for that conclusion. In arriving at these conclusions that certain practices were unfair or deceptive, DOT employed the same definitions that are set forth in this rule, though that analysis was done informally at the Department and not further described in rule preambles.

Second, future discretionary rulemakings would be subject to a hearing procedure. Specifically, if the Department proposes that a practice was unfair or deceptive in a rulemaking, and that rulemaking raised scientific, technical, economic, or other factual issues that are genuinely in dispute, then interested parties may request an evidentiary hearing to gather evidence on those disputed issues of fact. Third, future rulemakings would explain the Department’s basis for finding a practice to be unfair or deceptive.

With respect to enforcement, the Department proposed three measures. First, when taking enforcement action against an airline or ticket agent for unfair or deceptive practices, the Department would use the proposed definitions of “unfair” and “deceptive” set forth above (unless a specific regulation issued under the authority of section 41712 applied to the practice in question, in which case the terms of the specific regulation would apply). Second, in future enforcement actions, the Department would provide the airline or ticket agent with the opportunity to be heard and to present mitigating evidence. This final rule codifies the longstanding practice of allowing regulated entities to present mitigating evidence during the course of informal DOT enforcement actions. In a typical enforcement action, the Office of Aviation Consumer Protection issues an investigation letter to an airline or ticket agent, seeking information about the extent and nature of the violations. During that process, the Office also allows airlines and ticket agents to present mitigating evidence (*e.g.*, that consumer harm was low, or that the airline or ticket agent has taken steps to mitigate the harm to consumers). While the rule now makes this process explicit, we do not expect an *expansion* in its usage; instead, we expect that it

⁶ 84 FR 71729–71733.

⁷ Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (December 17, 1980), appended to *International Harvester Co.*, 104 F.T.C. 949, 1070, 1073 (1984).

⁸ See, *e.g.*, *International Harvester*, 104 F.T.C. 949 (1984); Credit Practices Rule, Statement of Basis and Purpose, 49 FR 7740 (1984) (“Credit Practices Rule SBP”); *Orkin Exterminating Co., Inc.*, 108 F.T.C. 263 (1986); *aff’d*, *FTC v. Orkin*, 849 F.2d 1354 (11th Cir. 1988).

⁹ FTC Policy Statement on Deception (Oct. 14, 1983), 103 F.T.C. 174, 175 (1984) (appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)).

¹⁰ The proposal recognized that if Congress directed the Department to issue a rule declaring a specific practice to be unfair or deceptive, then the Department would do so without reference to the Department’s own definitions.

will continue unchanged after the issuance of this final rule. Third, in future enforcement orders, if a specific regulation does not apply to the practice in question, the Department would explain the basis for its finding that a practice was unfair or deceptive. The Department is of the view that these measures generally codify existing practice.

In addition, the Department solicited comment on related matters. For example, the Department asked whether the term “practice” should be defined. The Department also noted that it relies on its general unfair and deceptive practices authority in certain specialized areas (e.g., privacy, frequent flyer programs, and air ambulance service) and asked whether the proposed general definitions of “unfair” or “deceptive” were sufficient to provide stakeholders sufficient notice of what constitutes an unfair or deceptive practice in these or other subject areas.

The comment period for the NPRM was originally scheduled to expire on April 28, 2020. However, in response to a request by consumer advocacy organizations, the comment period was extended to May 28, 2020.

II. Summary of NPRM Comments and the Department’s Responses

A. Overview

The Department received a total of 224 comments by the end of the comment period. Approximately 180 comments were filed by individual consumers, who almost uniformly opposed the NPRM. Individual consumers typically did not comment on any specific provision, but instead opposed the NPRM as a whole, viewing it as a weakening of aviation consumer protection. Many consumers noted with disapproval that the NPRM was initiated at the request of airlines, which in their view engage in practices that are anti-consumer.

Consumer advocacy organizations¹¹ and two FTC Commissioners¹² generally opposed the proposals on the ground that they were either unnecessary or weakened consumer protection. Four Senators and one Member of Congress¹³ urged the Department to discontinue the NPRM

¹¹ Travelers United, Flyersrights.org, National Consumers League, Consumer Action, American Association for Justice (formerly American Trial Lawyers’ Association), Travel Fairness Now, Consumer Reports, Consumer Federation of America, and US PIRG.

¹² Commissioners Rebecca Kelly Slaughter and Rohit Chopra.

¹³ Senators Edward J. Markey, Tammy Baldwin, Maria Cantwell, and Richard Blumenthal and Representative Katie Porter.

for many of the same reasons identified by consumer advocates and the FTC Commissioners.

Airline associations, individual airlines, and a nonprofit public policy organization¹⁴ broadly supported the proposals in the NPRM on the ground that they provided greater transparency and due process in the Department’s rulemaking and enforcement activities. Airlines also suggested that the Department adopt additional provisions, which will be discussed in greater detail below.

Travel agent representatives and a large travel agency¹⁵ generally supported the NPRM for the reasons expressed by airlines; however, they opposed the proposal to adopt hearing procedures relating to discretionary aviation consumer protection rulemakings.

We will discuss the comments in further detail below.

B. Definitions

1. Definitions of “Unfair” and “Deceptive”

Consumer advocacy organizations generally recognized that the proposed definitions of “unfair” and “deceptive” mirror the FTC’s interpretation of those terms. They argued, however, that the Department should not limit itself to those specific definitions. They contended that the flexibility of undefined terms serves as a deterrent to engaging in practices that do not fit within the proposed definitions, but which may nevertheless be unfair or deceptive.

They argued that this flexibility is especially important in the field of air transportation because the Airline Deregulation Act (ADA) prohibits States from regulating the unfair and deceptive practices of airlines. They contended that outside of the field of aviation, State consumer protection laws serve as a backstop to the FTC’s authority, and that many consumer protection agencies take aggressive and successful action under State law with respect to practices that would not qualify as unfair or deceptive under the FTC’s definitions. They also observed that because of ADA preemption, relief in court is generally limited to Federal class-actions or small claims. Consumer organizations concluded that the FTC definitions may be used for guidance,

¹⁴ Airlines for America (A4A), International Air Transport Association (IATA), National Business Aviation Association (NBAA), U.S. Tour Operators Association (USTOA), Spirit Airlines, Southwest Airlines, and the Competitive Enterprise Institute (CEI).

¹⁵ Travel Tech and BCD Travel USA.

but should not be transformed into regulatory text.

FTC Commissioner Chopra urged the Department not to adopt the FTC’s definitions, for many of the reasons identified by consumer advocacy organizations. He also raised several additional concerns. First, he argued that after the FTC adopted its Policy Statement on Unfairness in 1980, the Commission’s “number of enforcement actions and rulemakings plummeted, leaving a vacuum that hobbled development of the law.”¹⁶ Commissioner Chopra also argued that “the key planks undergirding the FTC’s unfairness definition—competitive markets, consumer choice, and a de-emphasis on public policy—are poorly suited to airline regulation,” because the aviation market is not competitive, in his view, and because the Transportation Code affirmatively requires the Secretary to emphasize certain public policies.¹⁷ He also argued that the proposed definitions do not adequately take these policies into account.

Airlines and travel agents supported the proposed definitions, arguing that they provide much-needed transparency and predictability to regulated industries. Southwest Airlines argued that the lack of clear definitions has led DOT to overreach in certain past rulemakings and enforcement actions. Southwest also argued that the third prong of the unfairness definition (i.e., that the harm of the practice “is not outweighed by countervailing benefits to consumers or to competition”) correctly reflects departmental policy to place “maximum reliance on competitive market forces and on actual and potential competition.”¹⁸ Spirit Airlines suggested that the proposed definition of “deceptive,” which currently refers to misleading a singular “consumer” acting reasonably under the circumstances, should be written in the plural to reflect that the practice must be misleading to “consumers” in the aggregate. Travel agents argued that because DOT and FTC share jurisdiction over them, it is important for the two regulatory standards to be harmonious.

¹⁶ Comment of Commissioner Chopra at 2. He particularly noted that in the years after adoption of the Policy Statement, the FTC failed to take action against predatory lending and the deceptive practices of the tobacco industry; instead, states took the lead, and the FTC’s authority over consumer lending practices was transferred to the Consumer Financial Protection Bureau (CFPB), which has a broader standard for taking enforcement action than the FTC. *Id.* at 6–8.

¹⁷ *Id.* at 10.

¹⁸ Southwest comment at 4, citing 49 U.S.C. 40101(a)(6), (12).

After reviewing the comments, the Department remains of the view that it should adopt the definitions of “unfair” and “deceptive” as proposed. We are guided by the principles set forth in our recent final rule, “Administrative Rulemaking, Guidance, and Enforcement Procedures,” which seeks to provide greater transparency to regulated entities when conducting enforcement actions and adjudications.¹⁹ Offering clear definitions of “unfair” and “deceptive” will serve this goal. We note that transparency and clarity is particularly needed with respect to ticket agents, which are subject to both FTC and DOT jurisdiction.

We stress that the definitions that we adopt do not reflect a substantive departure from past DOT practice. As we explained in the NPRM, DOT has traditionally relied on these definitions when taking enforcement and discretionary rulemaking actions. Therefore, the Department is not of the view that codifying these definitions will diminish the Department’s authority to take enforcement action or to regulate effectively.

We recognize the argument of consumer advocacy organizations and Commissioner Chopra that the ADA preempts State consumer protection agencies from acting as a more aggressive backstop to DOT action. At present, however, we are of the view that the proposed definitions are adequate to ensure regulations continue to prohibit unfair and deceptive practices while at the same time providing necessary transparency to the regulated industry. We also recognize that under FTC practice, the role of public policy is explicitly deemphasized,²⁰ while Congress has directed the Department to take into account a variety of policies in conducting economic regulation of air transportation.²¹ We are not convinced that this distinction compels a different result. While the definitions of “unfair” and “deceptive” will remain the guiding principles for regulation and enforcement, in doing so, the Department recognizes its statutory

¹⁹ 84 FR 71716, citing Executive Order 13892, “Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication” (October 9, 2019).

²⁰ As noted above, pursuant to 15 U.S.C. 45(n), the FTC may rely on public policy, along with other evidence, for making a determination of unfairness, but public policy may not be the primary basis of its decision.

²¹ 49 U.S.C. 40101 (directing the Department, when engaging in economic regulation of air transportation, to consider 16 matters, “among others, as being in the public interest and consistent with public convenience and necessity.”)

responsibility to consider the public policies enumerated by Congress. These policies include safety, ensuring economic competition, and preventing unfair and deceptive practices.²²

2. Intent as an Element of Unfairness or Deception

The proposed rule would clarify that intent is not an element of either unfairness or deception. We received relatively few comments on this issue. FTC Commissioners Chopra and Slaughter both expressed the view that the Department’s position was legally correct. A4A and IATA, however, urged the Department to adopt an “intent to deceive” standard for both unfairness and deception. In the alternative, they urged the Department to give lack of intent “significant weight” when exercising its enforcement discretion.

We remain of the view that intent is not an element of either unfairness or deception.²³ We also reject A4A and IATA’s suggestion to adopt an intent requirement. Such a requirement would place the Department’s view of unfairness and deception substantially out of step with FTC precedent. It would also limit the Department’s consumer protection actions to only those matters where parties establish and the Department can substantiate the private intent of carriers and ticket agents. In light of the revisions to the Department’s rulemaking and enforcement procedures adopted in this final rule to enhance the justifications for actions taken under the Department’s statutory authority, we view this as an unnecessary and unacceptably high bar. We also decline to include in the regulation the weight that lack of intent should be given in any future enforcement action, because the proper exercise of enforcement discretion generally involves an individualized consideration of a variety of factors.²⁴

3. Definition of Additional Terms

Airlines urged the Department to define further the component elements of unfairness and deception, such as “substantial harm,” “likely to mislead,”

²² See 49 U.S.C. 40101(a)(1), (4), (6), (7), (9), and (12).

²³ See 85 FR 11885 (intent is not required under Federal case law interpreting the FTC Act, and noting that the definition of “false advertisement” in the FTC Act makes no reference to intent to deceive).

²⁴ See 49 CFR 5.97 (“Where applicable statutes vest the agency with discretion with regard to the amount or type of penalty sought or imposed, the penalty should reflect due regard for fairness, the scale of the violation, the violator’s knowledge and intent, and any mitigating factors (such as whether the violator is a small business)”).

“reasonably avoidable,” and “acting reasonably under the circumstances.” In general, airlines asked the Department to adapt into regulatory text certain aspects (but not all of the aspects) of the FTC’s guidance on these terms, as found in the 1980 Policy Statement on Unfairness and the 1983 Policy Statement on Deception. We decline this invitation, because the regulatory text adequately explains the necessary elements of unfairness and deception.²⁵ The Department will continue to look to the FTC Policy Statements, as well as FTC precedent and the Department’s own precedent, for guidance in determining whether any specific practice meets all of the component elements of unfairness and deception.

4. Definition of “Practice”

In the NPRM, the Department noted that neither the DOT nor the FTC Act defines “practice.” The Department indicated that it did not believe that a definition of “practice” was necessary, because its aviation consumer protection regulations are always directed to “practices” rather than individual acts. The Department also explained that its enforcement efforts include a determination that the conduct in question reflects a practice or policy affecting multiple consumers, rather than an isolated incident. We concluded that “in general, the Department is of the view that proof of a practice in the aviation consumer

²⁵ For example, A4A/IATA asks the Department to define “substantial harm” as not involving merely trivial or speculative harm. A4A/IATA comment at 6, citing 1980 FTC Policy Statement on Unfairness. We are of the view that this clarification is unnecessary because the term “substantial harm” would necessarily exclude “trivial or speculative harm.” (We also observe, however, that in keeping with 15 U.S.C. 45(n), a practice is unfair not only if it causes substantial harm, but if also it is *likely* to cause substantial harm.)

Similarly, A4A/IATA asks us to define “not reasonably avoided” as excluding circumstances where a consumer’s willful, intentional, or reckless conduct leads to harm (for example, by intentionally taking advantage of a mistakenly published fare). We are of the view that in general, the term “not reasonably avoided” would necessarily exclude the types of self-imposed harms described by A4A and IATA. We also note that mistaken fares are governed by a specific regulation relating to post-purchase price increases (14 CFR 399.88). The Department has issued guidance with respect to mistaken fares at https://www.transportation.gov/sites/dot.gov/files/docs/Mistaken_Fare_Policy_Statement_05082015_0.pdf.

Finally, A4A, IATA, Southwest, and Spirit all stress under the 1983 FTC Policy Statement on Deception, deception should be judged by reference to reasonable consumers as a whole, and that a single consumer’s unreasonable interpretation of a statement does not make it deceptive. We agree that deception is judged in reference to a reasonable consumer and believe that these concepts are adequately reflected in the phrase “acting reasonably under the circumstances,” regardless of whether the word “consumer” is singular or plural.

protection context requires more than a single isolated incident. On the other hand, even a single incident may be indicative of a practice if it reflects company policy, training, or lack of training.”²⁶ We sought comment, however, on whether a definition of “practice” was necessary.

We received relatively few comments on this issue. Consumer advocacy organizations largely did not address it. Spirit, Travel Tech, and FTC Commissioner Slaughter opined that a definition was not necessary. The NBAA and USTOA urged the Department to adopt a definition that reflected the Department’s current understanding, described above. A4A and IATA urged the Department to define “practice” as “a pattern of repetitive conduct that harmed multiple consumers rather than a single act.”²⁷ A4A and IATA stated that under this standard, one “mistaken advertisement” would not be a practice even if the same advertisement runs multiple times.²⁸ Relatedly, A4A and IATA urged the Department to refrain from taking enforcement action with respect to “a single act or isolated acts by a carrier,” and instead take action only if the conduct is repeated after a warning.²⁹

After reviewing the comments on this issue, we remain of the view that it is not necessary to define “practice.” The Department notes that this issue will arise in relatively rare instances where the Department seeks to take enforcement action in an area where no specific regulation applies, and where there is a reasonable disagreement over whether the conduct reflects a truly isolated incident. In such cases, regulated entities will have the opportunity to be heard and to present evidence that the conduct at issue does not constitute a practice, as set forth in this rule.

C. Rulemaking Proposals

In the NPRM, the Department proposed a hearing procedure that would be available when the Department proposed a discretionary aviation consumer protection rulemaking declaring a practice to be unfair or deceptive. To summarize, after the issuance of an NPRM, interested parties could request a formal hearing on the ground that the proposed rule raised one or more disputed technical, scientific, economic, or other complex factual issues. The General Counsel would have the authority to grant or

deny the hearing using criteria set forth in this rule. If the hearing is granted, an Administrative Law Judge or other neutral hearing officer would conduct the formal hearing using procedures adapted from the Administrative Procedure Act (APA) or similar rules adopted by the Secretary. The hearing officer would issue a detailed report on the disputed factual issue(s), after which the General Counsel would determine whether the proposed rule should be continued, amended, or terminated.

Consumer advocacy organizations strongly urged the Department not to adopt these hearing procedures. They argued that the Department did not demonstrate that the typical notice-and-comment procedures of the APA were inadequate to gather a proper factual basis for discretionary rulemaking. Some commenters noted that these hearing procedures were unnecessary given the updates to the Department’s general rulemaking procedures in 49 CFR part 5. They also contended that formal hearing procedures will inevitably create lengthy delays and numerous opportunities for regulated entities to lobby against the proposed rule. Some commenters argued that the proposed rulemaking has more liberal standards for granting a hearing than there are for denying a hearing; as a result, hearings will threaten to become the norm. Other advocates observed that the proposal does not have a clear mechanism for consumers to argue that a hearing is not necessary.

FTC Commissioner Slaughter commented on the FTC’s own experience with similar formal hearing procedures, which were imposed by Congress, known as “Mag-Moss” procedures.³⁰ Commissioner Slaughter argued that such hearing procedures do not make rulemaking impossible, but “the great difficulty of undergoing a Mag-Moss rulemaking compared with rulemaking under the APA should not be understated. The additional procedural requirements represent an enormous drain on staff resources, to say nothing of the additional time and effort they require of stakeholders.”³¹ She argued that there is a growing bipartisan consensus for the FTC to issue privacy regulations not under Mag-Moss, but instead under APA procedures. Commissioner Slaughter argued that if the Department issues its own privacy regulations using the proposed formal hearing procedures, the

Department will “create a regulatory incongruence in which the Department is the slowest and least capable regulator in the privacy arena.”³²

Ticket agents also urged the Department not to adopt formal hearing procedures, for many of the reasons cited by consumer advocates and Commissioner Slaughter. Travel Tech noted the incongruity of the Department requiring heightened hearing procedures only for its highest-cost rules and for discretionary aviation consumer protection rules, which generally do not impose nearly such a high economic burden.³³ Travel Tech also argued that the Department’s institutional expertise in aviation consumer protection matters ensures that formal hearing will generally not be necessary. Travel Tech contended that formal hearings should only be required when directed by Congress or under very limited and unusual circumstances.³⁴

Airlines generally favored the proposal on the ground that it provides regulated entities with an opportunity to test thoroughly the factual assumptions on which discretionary consumer protections are based. They argued that such hearings are helpful to determine whether a market failure has taken place such that regulation is necessary.³⁵

After careful review of the comments in this area, the Department has decided to retain a hearing procedure that would be available when the Department proposes a discretionary aviation consumer protection rulemaking declaring a practice to be unfair or deceptive. This is consistent with section 41712, which requires notice and an opportunity for a hearing before a finding that an air carrier, foreign air carrier, or ticket agent is engaged in an

²⁶ *Id.* at 4.

²⁷ Comment of Travel Tech at 6–7.

²⁸ *Id.* at 9 (“Travel Tech thus proposes that a formal fact-finding hearing would only be appropriate in the very unusual circumstance when either Congress directs that a specific rule be adopted only after an on the record hearing or when the agency’s General Counsel finds that a specific factual issue critical to a claim that a particular practice is unfair or deceptive (and not an economic or policy consideration) is in dispute and cannot be adequately resolved through the usual notice-and-comment process.”)

²⁹ A4A Comment at 16, citing 49 CFR 5.11 (before initiating a rulemaking, the Department should identify “the need for the regulation, including a description of the market failure or statutory mandate necessitating the rulemaking”). See also comment of Spirit Airlines (arguing that the Department’s repealed NPRM on dissemination of ancillary fees to third party ticket sellers was based on conflicting/misleading information regarding passengers’ ability to get this information). Spirit also argued that the Department should engage in Advance Notice of Proposed Rulemaking (ANPRM) to gather comment on whether practices are unfair or deceptive.

³⁰ See 15 U.S.C. 57a (codifying the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act of 1975, Public Law 93–637 (“Mag-Moss”).

³¹ Comment of Commissioner Slaughter at 3.

²⁶ 85 FR 11885.

²⁷ Comment of A4A/IATA at 12.

²⁸ *Id.*

²⁹ *Id.* at 13.

unfair or deceptive practice or an unfair method of competition. The Department sees value in offering additional hearing procedures for low-cost discretionary aviation consumer protection rules where scientific, technical, economic, or other factual issues are genuinely in dispute. At the same time, the Department recognizes the concerns raised by commenters that formal hearing procedures may add time to the rulemaking process. As such, the hearing procedures for discretionary aviation consumer protection rules set forth in this final rule differ from the procedures set forth in the Department's general rulemaking procedures in 49 CFR part 5 for the Department's high-impact or economically significant rules. For example, under this final rule, the General Counsel would be free to adopt more flexible rules for the hearing than would be required for a high-impact or economically significant rulemaking. The General Counsel also has more flexibility with respect to appointing an appropriate hearing officer for such hearings. Finally, the presiding officer is not required to issue a report; the officer need only place on the docket minutes of the hearing with sufficient detail as to reflect fully the evidence and arguments presented on the disputed issues of fact, along with proposed findings addressing those issues. By adopting hearing procedures for discretionary aviation consumer protection rulemakings that are less stringent and more flexible than the formal hearing procedures for high impact or economically significant rules, the Department ensures that interested parties have an opportunity to test factual assumptions on which discretionary consumer protection rulemaking actions are based, consistent with the underlying statutory authority under which the Department is regulating, while minimizing the likelihood of extensive delays or a drain on staff resources.

These procedures, as modified, reflect the Department's continued view that interested parties should have the opportunity to be heard when the Department proposes discretionary rulemakings that may be based on complex and disputed economic, technical, or other factual issues. We also note that the ordinary notice and comment procedures of the APA remain the default process: To obtain a hearing, the party requesting the hearing has the initial burden of showing that, among other factors, the ordinary notice and comment procedures are unlikely to provide an adequate examination of the issues to permit a fully informed

judgment. The rule retains the safeguard that the General Counsel may decline a hearing if it would unreasonably delay the rulemaking. We also generally disagree with commenters who stated that the standards for granting a hearing are necessarily more lenient than the standards for denying them.

We also note that the Department's use of similar procedures to supplement traditional notice-and-comment is not new.³⁶ For example, in 2011, the Department's Bureau of Transportation Statistics held a public meeting to gather information about industry practices for processing and accounting for baggage and wheelchairs, in connection with a pending rulemaking.³⁷ More recently, the Department asked the Architectural and Transportation Barriers Compliance Board (Access Board) to hold a hearing to gather public input on potential new standards for on-board wheelchairs, also in connection with a pending rulemaking.³⁸ The Department recognizes certain differences between the public meetings that sometimes were held in the context of earlier rulemakings³⁹ and the hearings contemplated by this rule. For example, hearings will be held before a neutral officer, who must make findings on the record, while public meetings were previously led by staff from the government office involved in the rulemaking and findings were not separately summarized and placed on the record but rather were noted in the preamble if they were relied on in the rulemaking. Moreover, this rule clearly identifies procedures to all interested persons that hearings may be requested, while previously there was no formal process to request a public meeting so they were more likely to have been instituted by the Department or requested only by those parties that knew that the Department was open to holding public meetings in appropriate instances. In sum, while the hearing procedures reflected in the final rule may result in some additional delays to the rulemaking process beyond what

was experienced with public meetings, on the whole the new procedures will promote fairness, due process, and well-informed rulemaking, without unduly delaying the proceeding itself, and represent a reasonable and balanced approach consistent with the Department's rulemaking and enforcement policies.

D. Enforcement Proposals

In the NPRM, the Department proposed to codify certain enforcement practices. First, the Department proposed that before the Office of Aviation Consumer Protection determined how to resolve a matter involving a potential unfair or deceptive practice, it would provide an opportunity for the alleged violator to be heard and to present relevant evidence in its defense. Such evidence would include, but not be limited to, the following: (1) Evidence that the consumer protection regulation at issue was not violated; (2) evidence that the conduct was not unfair or deceptive (if no specific regulation applied); and (3) evidence that that consumer harm was limited or that the alleged violator has taken steps to mitigate the harm. The Department also proposed that when the Office issued a consent order declaring that a practice was unfair or deceptive, and no specific regulation applied to the conduct at issue, then the Office would explain the basis for its finding that the conduct was unfair or deceptive, using the definitions set forth in this rule. Finally, the Department clarified that if the Office took enforcement action against a regulated entity by filing a complaint with an Administrative Law Judge, then the entity would have the opportunity for notice and a hearing as set forth in 14 CFR part 302. We noted that these procedures reflected the longstanding practices of the Office of Aviation Consumer Protection.

We received few comments on this element of the proposed rule. Most consumer advocates did not opine on the issue, while National Consumers League and Consumer Action advised that they were unnecessary. Travel Fairness Now generally did not object to the measures, but urged the Department to declare that an unfair or deceptive practice with limited consumer harm would still be subject to enforcement action. Airlines and ticket agents generally supported these proposals.

In the final rule, we will adopt these measures as proposed in the NPRM. They reflect current practice, and afford reasonable due process to regulated entities. These specific measures are also consistent with the general principles set forth in the Department's

³⁶ See <https://cms7.dot.gov/regulations/rulemaking-process>, under "May an agency supplement the APA requirements?" ("We may use public meetings or hearings before or after a proposal is issued for a variety of reasons. Public meetings allow us to ask questions. They allow for interaction among participants with different views on the issues involved, and they provide a better opportunity for members of the public who believe they are more effective making oral presentations than submitting written comments.")

³⁷ See <https://www.regulations.gov/document?D=RITA-2011-0001-0280>.

³⁸ 84 FR 43100 (August 20, 2019); see <https://www.regulations.gov/document?D=ATBCB-2019-0002-0001>.

³⁹ *E.g.*, 77 FR 25105 (April 27, 2012).

recent final rule relating to enforcement.⁴⁰

E. Privacy, Air Ambulance, and Frequent Flyer Programs

The Department solicited comment on whether the general definitions of “unfair” or “deceptive” were sufficient to give notice to stakeholders of what constitutes unfair or deceptive practices with respect to the specialized fields of privacy, air ambulance service, and frequent flyer programs. While we did not receive specific comments related to frequent flyer programs, we did receive comment with respect to privacy and air ambulance service.

A4A asked the Department to declare that the Department has exclusive jurisdiction over airlines with respect to privacy practices. A4A also asked the Department to adopt detailed privacy regulations. A4A’s proposal would declare that “mishandling private information may be considered an unfair or deceptive practice,” and that “specific examples of unfair or deceptive practices with regard to the private information of consumers include” violating the terms of the airline’s privacy policy, failing to maintain reasonable data security measures for passengers’ private information, and violating various privacy statutes.

We generally agree with the substance of A4A’s proposal; indeed, it appears to be adapted from the privacy page of the Department’s consumer protection website, which recites many of these principles.⁴¹ Nevertheless, we decline to adopt it for procedural reasons. As noted above, one of the Department’s stated policies is to improve transparency and public participation in the rulemaking process. If the Department were to adopt detailed privacy regulations affecting air transportation and the sale of air transportation, it should first engage in the full notice-and-comment procedures of the APA, as well as the procedures set forth in this final rule.

Next, we received comments from insurers, air ambulance providers, and other interested parties about the regulation of air ambulance providers. The National Association of Insurance

Commissioners and nine researchers on health law, economics, and policy⁴² urged the Department to declare that balance billing is an unfair practice because it imposes substantial harm on patients who had no ability to avoid the charges, without countervailing benefits to consumers or to competition. Separately, the researchers urged the Department to find that charging full out-of-network prices for air ambulance service is an unfair practice, in part because of its effect on the private insurance market. Air ambulance operators⁴³ argued that specific regulation of air ambulance providers in this rulemaking would be premature at best, because the Air Ambulance and Patient Billing (AAPB) Advisory Committee has been established to address these issues comprehensively. Air ambulance operators also argued that balance billing should not be considered an unfair or deceptive practice. They contend that much of the consumer harm from balance billing arises from the practices of insurers, rather than air ambulance providers (for example, by under paying out-of-network air ambulance bills, or denying claims that were medically necessary). They also argue that many patients who receive a large balance bill ultimately pay a small fraction of that amount out-of-pocket.

After consideration of the comments submitted on this issue, we decline to adopt specific regulations relating to air ambulance providers. Section 418 of the FAA Reauthorization Act of 2018 (FAA Reauthorization Act) requires the Secretary, in consultation with the Secretary of Health and Human Services, to establish an advisory committee to review options to improve the disclosure of charges and fees for air medical services, better inform consumers of insurance options for such services, and protect consumers from balance billing. The FAA Reauthorization Act also contemplates that the Advisory Committee’s report and recommendations will serve as the basis for future regulations or other guidance as deemed necessary to provide other consumer protections for customers of air ambulance providers.⁴⁴ We agree that the most prudent course of action is to allow the work of the

AAPB Advisory Committee to run its course, rather than to issue more detailed regulations relating to air ambulance providers in this final rule.

F. Other Comments

We will address briefly a number of comments that do not fall squarely within the categories described above. First, A4A and IATA urge the Department to adopt a “clear and convincing evidence” standard for enforcement of unfair and deceptive practices. We decline to enact such a burden of proof standard here, particularly in light of the fact that most enforcement cases are adjudicated not through the courts, but rather through voluntary consent orders. We also note that during these informal proceedings, regulated entities have the opportunity to present mitigating evidence as set forth above.

Next, A4A and IATA urge the Department to require the Office of Aviation Consumer Protection to present evidence on all of the elements of unfairness and deception, even in cases where a specific regulation enacted under the authority of section 41712 applies to the conduct in question. We decline this request because doing so would be unduly burdensome with limited or no benefit. By enacting a regulation under the authority of section 41712, the Department has already determined, after notice and comment, that the conduct in question is unfair or deceptive; in such cases, it should be sufficient to establish that the regulation itself was violated.⁴⁵ A4A and IATA also urge that they should be able to present mitigating evidence with respect to all of the prongs of unfairness and deception. We note that in informal enforcement proceedings involving the violation of specific regulations, regulated entities would have the opportunity to present relevant evidence, including evidence that consumer harm was limited.

Next, A4A and IATA argue that the Office of Aviation Consumer Protection should affirmatively furnish “exculpatory evidence” in its possession. We agree with this practice, and the Office is required to do so under the Department’s existing enforcement procedures, which are set forth in another rule.⁴⁶

⁴⁵ See Comment of Travel Fairness Now (urging the Department to clarify that it will not use this final rule as a vehicle for repealing existing regulations, because they were well justified).

⁴⁶ 49 CFR 5.89 (duty to disclose exculpatory evidence).

⁴⁰ See, e.g., 49 CFR 5.57 (“Enforcement adjudications require the opportunity for participation by directly affected parties and the right to present a response to a decision maker, including relevant evidence and reasoned arguments”); 49 CFR 5.59 (Department’s enforcement action should conclude with, among other things, a “well-documented decision as to violations alleged and any violations found to have been committed.”)

⁴¹ <https://www.transportation.gov/individuals/aviation-consumer-protection/privacy>.

⁴² See <https://www.regulations.gov/document?D=DOT-OST-2019-0182-0193>.

⁴³ Association of Air Medical Services, Air Methods, and PHI Health, LLC.

⁴⁴ For further information about the AAPB Advisory Committee, see <https://www.transportation.gov/airconsumer/AAPB> and the Committee’s docket, available at <https://www.regulations.gov/docket?D=DOT-OST-2018-0206>.

G. Formal Enforcement Proceedings

In the NPRM, the Department proposed to clarify that if regulated entities do not enter into a negotiated settlement with the Office of Aviation Consumer Protection with respect to potential violations of section 41712, then the Office may initiate a formal enforcement proceeding, and that hearings are available through this process. The Department did not receive comments on this provision, which restates current procedures found in 14 CFR part 302. In this final rule, the Department has made nonsubstantive editorial changes to the regulatory text such as adding a citation to a specific section of part 302. The Department has determined that good cause exists to dispense with notice and comment for these nonsubstantive editorial changes because they are ministerial in nature; therefore, public comment is unnecessary under 5 U.S.C. 553(b)(B).

III. Regulatory Analyses and Notices

A. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures (49 CFR Part 5)

This final rule is a significant regulatory action under section 3(f) of E.O. 12866, “Regulatory Planning and Review” (Oct. 4, 1993), supplemented by E.O. 13563, “Improving Regulation and Regulatory Review” (Jan. 21, 2011). Accordingly, the Office of Management and Budget (OMB) has reviewed it under that Order. This final rule is issued in accordance with the Department’s rulemaking procedures found in 49 CFR part 5 and DOT Order 2100.6.

This rule primarily involves agency procedure and interpretation. It clarifies how the Department interprets the terms “unfair” and “deceptive” and requires enhanced departmental procedures for regulation and enforcement in the area of aviation consumer protection. Clarifying and explicitly defining terminology advances the Department’s goal of improved transparency. Adopting enhanced procedures for future rulemaking and enforcement activities will help to ensure that the activities are rooted in fairness, due process, and an adequate factual foundation. These goals are described in the Department’s final rule, “Administrative Rulemaking, Guidance, and Enforcement Procedures.”⁴⁷

This rule aligns the Department’s policies and rules involving unfairness and deception in aviation consumer protection explicitly with principles adopted by the FTC. In the Department’s view, aligning the terms “unfair” and “deceptive” does not represent a substantive departure from past DOT practice. The definitions simply provide additional clarification to the public and regulated industries, and are not expected to affect the Department’s ability to prohibit unfair and deceptive practices. While clarifying the terms is not expected to lead to changes that would impact the Department, public, or any regulated entity, it provides a foundation for the other elements of this rule pertaining to future rulemaking and enforcement actions.

Effects on Future Rulemakings

This final rule will require the Department to use specific definitions of the terms “unfair” and “deceptive” when declaring certain practices to be unfair or deceptive in future discretionary rulemakings.

Specifically, this final rule requires the Department to support a finding of an “unfair” practice by demonstrating that the harm to consumers is (1) substantial; (2) not reasonably avoidable; and (3) not outweighed by offsetting benefits to consumers or competition. Similarly, it requires the Department to support a finding that a practice is “deceptive” by showing that: (1) The practice actually misleads or is likely to mislead consumers; (2) who are acting reasonably under the circumstances; (3) with respect to a material matter.

The Department has declared certain practices to be unfair or deceptive in several prior rulemakings, including the full fare advertising rule (14 CFR 399.84) and oversales rule (14 CFR part 250). In the supporting analysis for these rulemakings, the Department justified its finding of unfairness or deception without using the full three-pronged analysis for unfairness or deception found in this final rule.⁴⁸

In other instances, the Department has based its discretionary regulations on both section 41712 and other statutes. For example, the rule requiring on-time performance information during booking (14 CFR 234.11(b)) was based on both section 41712 and section 41702 (requiring carriers to provide safe and adequate interstate air transportation).⁴⁹ While the Department partly relied on a finding of consumer

harm under section 41712 as the basis for that requirement, it did not engage in the full three-part analysis for unfairness found in this final rule.

Demonstrating support for findings of unfairness or deception requires an analysis of data, which is generally collected and organized as part of a regulatory impact analysis (RIA). Factors such as potential harm to consumers, benefits to consumers or competition, whether a consumer can avoid harm, and whether a harm is “material” relate to the economic benefits and costs of regulating a practice. These benefits and costs are analyzed in an RIA and offer a rationale for finding a practice “unfair” or “deceptive.”

The Department customarily prepares a RIA or other regulatory evaluation as part of the E.O. 12866 review process for rulemakings involving aviation consumer protection. Further, the Department’s final rule on “Administrative Rulemaking, Guidance, and Enforcement Procedures” requires that all rulemakings including a supporting economic analysis. The Department will therefore need to continue to collect, organize, and analyze data and facts to address economic impacts.

The Department’s current practice of collecting and analyzing data, either for E.O. 12866 or departmental review, allows it to generate the necessary factual basis to support an explicit discussion of unfair or deceptive findings with little additional effort. While this final rule may result in the Department expending additional resources to prepare future discretionary aviation consumer protection rules and supporting analyses, the resources are expected to be small and more than justified by better, more deliberative internal decisions. Better internal decisions will improve rulemaking efficiency by reducing the resources needed to follow E.O. 12866 processes. The additional procedures required by this rule are expected to result in improved regulations that achieve their goals of protecting consumers without imposing any more burdens on regulated industry than necessary.

This rule does not require that the Department review existing rules to determine whether previous “unfair” or “deceptive” declarations would have been supported by the criteria described above. Existing rules are subject to retrospective review requirements under the Department’s rulemaking procedures found in 49 CFR part 5, DOT Order 2100.6, and other legal requirements, as applicable. The Department will consider whether

⁴⁸ See 76 FR 23110 (April 25, 2011).

⁴⁹ See 73 FR 74586 (December 8, 2008) (NPRM: “Enhancing Passenger Airline Protections”).

existing discretionary aviation consumer protection rules such as full fare advertising, oversales and refunds meet the standards found in this rule when performing the retrospective reviews, but it is not possible to judge the impact of this rule on the rules until the Department conducts the reviews. The Department considers many factors when conducting its retrospective reviews, including the continuing need for the rule and whether the rule has achieved its intended outcomes. It is unlikely that an existing rule would fail the standards set forth in this rule without failing existing standards that would prompt the Department to revise or rescind the rule. Judging the impact of this rule is confounded further because some existing rules do not rely solely on section 41712, as is the case with the rule requiring on-time performance information during booking noted above.

Under this rule, future discretionary rulemakings could be subject to a hearing procedure. The rule allows interested parties to request a hearing when the Department proposes a rule to classify a practice as unfair or deceptive, when the issuance of the NPRM raises one or more disputed technical, scientific, economic, or other complex factual issues, or when the NPRM may not satisfy the requirements of the Information Quality Act. Allowing interested parties an opportunity for a hearing ensures that they can test the information informing discretionary consumer protection regulations. However, following this rule's requirements to provide a sufficient factual basis to support an "unfair" or "deceptive" finding should reduce the need for the Department to hold such hearings.

Nevertheless, requests for hearings are expected to occur occasionally. While the Department lacks data that would allow it to distinguish the costs and time of conducting the hearings from the costs of conducting its normal business operations, the Department believes that any incremental costs and time would be small relative to the baseline scenario in which the Department did not enact the rule. Previous discretionary rulemakings involving unfair and deceptive practices in aviation consumer protection have attracted substantial interest from consumer advocates, airline industry advocates, and the general public. The Department engaged with these interested parties without the benefit of a formal process, and the engagements required investments of time and resources by the Department and interested parties. Because these

engagements were informal and with uncertain scopes, they were not as efficient as would be expected under a more formal process as would be the case under this rule. Without a formal process, parties tend to overinvest in preparation, incurring unnecessary costs, or underinvest, leading to additional engagements and administrative costs. For future rulemakings, establishing formal hearing procedures may reduce costs and time for both groups by increasing certainty about opportunities for engagement.

The hearing procedures established in this final rule are less stringent and more flexible than the hearing procedures for high-impact or economically significant rules detailed in the Department's general rulemaking procedures in 49 CFR part 5 and DOT Order 2100.6. In addition, the Department has experience using hearing procedures to supplement traditional notice-and-comment rulemaking, as described earlier for baggage and wheelchair accounting and for potential on-board wheelchair standards. Finally, the hearing procedures will provide consistency in the Department's exercise of its 41712 authority by mirroring the statute's hearing requirement to ensure rulemakings enacted under the same authority ensure due process, and are grounded in fairness and supported by an adequate factual foundation.

The Department believes that its experience with hearings, coupled with reduced complexity of the hearing procedures, will limit the additional staff resources needed to comply with the requirement and prevent it from leading to excessive delays in issuing aviation consumer protection rules. The General Counsel may also decline a hearing request if following the procedures would unreasonably delay the rulemaking. When deciding to decline a hearing request, the General Counsel will balance the impact of the hearing on departmental resources against the potential value of any information to be collected during the hearing process, and consider the quality of evidence presented, including but not limited to that presented by interested parties and in the Department's RIA and other supporting analyses.

Effects on Future Enforcement Actions

This final rule adds requirements for future enforcement actions analogous to the requirements for discretionary aviation consumer protection rulemakings. The Department will use the same definitions of unfair and

deceptive when taking enforcement action against an airline or ticket agent for unfair or deceptive practices. In future enforcement actions, the Department would also provide the airline or ticket agent with the opportunity to be heard and to present mitigating evidence. The opportunity for a hearing before a finding that any air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or an unfair method of competition already exists under section 41712. Finally, in future enforcement orders, if a specific regulation does not apply to the practice in question, the Department would explain the basis for its finding that a practice was unfair or deceptive.

As explained in the NPRM, the Department views these measures as a codification of existing practice, rather than a change in policy, because the Department has typically relied on the explicit definitions of "unfair" and "deceptive" in prior enforcement orders. Applying these terms and providing an opportunity for a hearing in enforcement proceedings is largely noncontroversial, and the Department received few comments on this element of the rule at the NPRM stage. The Department does not expect to need to expend additional resources in aviation consumer protection proceedings due to this rule, or expect that the rule will increase the amount of time needed to come to resolution. The Department believes that regulated entities could see some benefit, however, from upfront clarification of the guidelines and criteria that the Department follows when enforcing aviation consumer protection regulations involving unfair and deceptive practices.

This rule is not an E.O. 13771 regulatory action because it does not impose any more than *de minimis* regulatory costs. This final rule provides an additional mechanism for industry to provide input to the Department on its discretionary aviation consumer protection rulemakings. Private industry should not experience more than minimal additional costs relative to the status quo because it already engages in significant information exchange with the Department. Industry has the option of continuing use of historical mechanisms for providing input to discretionary aviation consumer protection, and is not required to make use of the alternatives set forth in this rule. The Department should not experience significant additional costs because it has considerable experience conducting analysis in support of aviation consumer protection rules as well as hearings analogous to those in

this rule. Such efforts are consistent with the Department's normal business operations, and any additional resources needs could be accommodated through a simple and temporary realignment of internal resources.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.*, aircraft with up to 60 seats/18,000-pound payload capacity). See 14 CFR 399.73. The Department has determined that this rule does not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not include any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget

(OMB) for each collection of information it conducts, sponsors, or requires through regulations. The DOT has determined there are no new information collection requirements associated with this final rule.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 10.c.16.h of DOT Order 5610.1D categorically excludes "[a]ctions relating to consumer protection, including regulations." Since this rulemaking relates to the definition of unfair and deceptive practices under Section 41712, the Department's central consumer protection statute, this is a consumer protection rulemaking. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

H. Privacy Act

Anyone may search the electronic form of all comments received into any of OST's dockets by the name of the individual submitting the comment, or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review USDOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477-8.

I. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 40113(a), which grants the Secretary the authority to take action that the Secretary considers

necessary to carry out 49 U.S.C. Subtitle VII (Aviation Programs), including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

J. Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in Spring and Fall of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 399

Consumer protection, Policies, Rulemaking proceedings, Enforcement, Unfair or deceptive practices.

For the reasons discussed in the preamble, the Department amends 14 CFR part 399 as follows:

PART 399—STATEMENTS OF GENERAL POLICY

■ 1. The authority citation for part 399 is revised to read as follows:

Authority: 49 U.S.C. 41712, 40113(a).

Subpart F—Policies Relating to Rulemaking Proceedings

■ 2. Section 399.75 is added to subpart F to read as follows:

§ 399.75 Rulemakings relating to unfair and deceptive practices.

(a) *General.* When issuing a proposed or final regulation declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), unless the regulation is specifically required by statute, the Department shall employ the definitions of "unfair" and "deceptive" set forth in § 399.79.

(b) *Procedural requirements.* When issuing a proposed regulation under paragraph (a) of this section that is defined as high impact or economically significant within the meaning of 49 CFR 5.17(a), the Department shall follow the procedural requirements set forth in 49 CFR 5.17. When issuing a proposed regulation under paragraph (a) of this section that is not defined as high impact or economically significant within the meaning of 49 CFR 5.17(a), unless the regulation is specifically required by statute, the Department shall adhere to the following procedural requirements:

(1) *Request for a hearing.* Following publication of a proposed regulation, and before the close of the comment

period, any interested party may file in the rulemaking docket a petition, directed to the General Counsel, to hold a hearing on the proposed regulation.

(2) *Grant of petition for hearing.* Except as provided in paragraph (b)(3) of this section, the petition shall be granted if the petitioner makes a plausible prima facie showing that:

(i) The proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act;

(ii) The ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; and

(iii) The resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule.

(3) *Denial of petition for hearing.* A petition meeting the requirements of paragraph (b)(2) of this section may be denied if the General Counsel determines that:

(i) The requested hearing would not advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by this section; or

(ii) The hearing would unreasonably delay completion of the rulemaking.

(4) *Explanation of denial.* If a petition is denied in whole or in part, the General Counsel shall include a detailed explanation of the factual basis for the denial, including findings on each of the relevant factors identified in paragraph (b)(2) or (3) of this section.

(5) *Hearing notice.* If the General Counsel grants the petition, the General Counsel shall publish notification of the hearing in the **Federal Register**. The document shall specify the proposed rule at issue and the specific factual issues to be considered at the hearing. The scope of the hearing shall be limited to the factual issues specified in the notice.

(6) *Hearing process.* (i) A hearing under this section shall be conducted using procedures approved by the General Counsel, and interested parties shall have a reasonable opportunity to participate in the hearing through the presentation of testimony and written submissions.

(ii) The General Counsel shall arrange for a neutral officer to preside over the hearing and shall provide a reasonable opportunity to question the presenters.

(iii) After the hearing and after the record of the hearing is closed, the hearing officer shall place on the docket

minutes of the hearing with sufficient detail as to fully reflect the evidence and arguments presented on the issues, along with proposed findings addressing the disputed issues of fact identified in the hearing notice.

(iv) Interested parties who participated in the hearing shall be given an opportunity to file statements of agreement or objection in response to the hearing officer's proposed findings. The complete record of the hearing shall be made part of the rulemaking record.

(7) *Actions following hearing.* (i) Following the completion of the hearing process, the General Counsel shall consider the record of the hearing, including the hearing officer's proposed findings, and shall make a reasoned determination whether to terminate the rulemaking; to proceed with the rulemaking as proposed; or to modify the proposed rule.

(ii) If the General Counsel decides to terminate the rulemaking, the General Counsel shall publish a document in the **Federal Register** announcing the decision and explaining the reasons for the decision.

(iii) If the General Counsel decides to finalize the proposed rule without material modifications, the General Counsel shall explain the reasons for the decision and its responses to the hearing record in the preamble to the final rule.

(iv) If the General Counsel decides to modify the proposed rule in material respects, the General Counsel shall publish a new or supplemental notice of proposed rulemaking in the **Federal Register** explaining the General Counsel's responses to and analysis of the hearing record, setting forth the modifications to the proposed rule, and providing additional reasonable opportunity for public comment on the proposed modified rule.

(8) *Interagency review process.* The hearing procedures under this paragraph (b)(8) shall not impede or interfere with the interagency review process of the Office of Information and Regulatory Affairs for the proposed rulemaking.

(c) *Basis for rulemaking.* When issuing a proposed or final regulation declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), unless the regulation is specifically required by statute, the Department shall articulate the basis for concluding that the practice is unfair or deceptive to consumers as defined in § 399.79.

Subpart G—Policies Relating to Enforcement

■ 3. Section 399.79 is added to subpart G to read as follows:

§ 399.79 Policies relating to unfair and deceptive practices.

(a) *Applicability.* This policy shall apply to the Department's aviation consumer protection actions pursuant to 49 U.S.C. 41712(a).

(b) *Definitions.* (1) A practice is "unfair" to consumers if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.

(2) A practice is "deceptive" to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter. A matter is material if it is likely to have affected the consumer's conduct or decision with respect to a product or service.

(c) *Intent.* Proof of intent is not necessary to establish unfairness or deception for purposes of 49 U.S.C. 41712(a).

(d) *Specific regulations prevail.* Where an existing regulation applies to the practice of an air carrier, foreign air carrier, or ticket agent, the terms of that regulation apply rather than the general definitions set forth in this section.

(e) *Informal enforcement proceedings.* (1) Informal enforcement proceedings will be conducted pursuant to the policies and procedures found in 49 CFR part 5, subpart D. Before any determination is made on how to resolve a matter involving a potential unfair or deceptive practice, the U.S. Department of Transportation's Office of Aviation Consumer Protection will provide an opportunity for the alleged violator to be heard and present relevant evidence, including but not limited to:

(i) In cases where a specific regulation applies, evidence tending to establish that the regulation at issue was not violated and, if applicable, that mitigating circumstances apply;

(ii) In cases where a specific regulation does not apply, evidence tending to establish that the conduct at issue was not unfair or deceptive as defined in paragraph (b) of this section; and

(iii) Evidence tending to establish that consumer harm was limited, or that the air carrier, foreign air carrier, or ticket agent has taken steps to mitigate consumer harm.

(2) During this informal process, if the Office of Aviation Consumer Protection reaches agreement with the alleged violator to resolve the matter with the

issuance of an order declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), and when a regulation issued under the authority of section 41712 does not apply to the practice at issue, then the Department shall articulate in the order the basis for concluding that the practice is unfair or deceptive to consumers as defined in this section.

(f) *Formal enforcement proceedings.* When there are reasonable grounds to believe that an airline or ticket agent has violated 49 U.S.C. 41712, and efforts to settle the matter have failed, the Office of Aviation Consumer Protection may issue a notice instituting an enforcement proceeding before an administrative law judge pursuant to 14 CFR 302.407. After the issues have been formulated, if the matter has not been resolved through pleadings or otherwise, the parties will receive reasonable written notice of the time and place of the hearing as set forth in 14 CFR 302.415.

Issued this 24th day of November, 2020, in Washington, DC, under authority delegated in 49 CFR 1.27(n).

Steven G. Bradbury,
General Counsel.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038-AE46

Exemption From Registration for Certain Foreign Intermediaries

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is adopting amendments (Final Rule) revising the conditions set forth in the Commission regulation under which a person located outside of the United States (each, a foreign located person) engaged in the activity of a commodity pool operator (CPO) in connection with commodity interest transactions on behalf of persons located outside the United States (collectively, an offshore commodity pool or offshore pool) would qualify for an exemption from CPO registration and regulation with respect to that offshore pool. The Final Rule provides that the exemption under the applicable Commission regulation for foreign

located persons acting as a CPO (a non-U.S. CPO) on behalf of offshore commodity pools may be claimed by such non-U.S. CPOs on a pool-by-pool basis. The Commission is also adopting a provision clarifying that a non-U.S. CPO may claim an exemption from registration under the applicable Commission regulation with respect to a qualifying offshore commodity pool, while maintaining another exemption from CPO registration, relying on a CPO exclusion, or even registering as a CPO, with respect to its operation of other commodity pools. Additionally, the Commission is adopting a safe harbor by which a non-U.S. CPO of an offshore pool may rely upon that exemption, if it satisfies several enumerated factors related to its operation of the offshore commodity pool. The Commission is also adopting an amendment permitting U.S. affiliates of a non-U.S. CPO to contribute initial capital to such non-U.S. CPO's offshore pools, without affecting the eligibility of the non-U.S. CPO for an exemption from registration under the applicable Commission regulation. The Commission is also adopting amendments to the applicable Commission regulation originally proposed in 2016 that clarify whether clearing of commodity interest transactions through a registered futures commission merchant (FCM) is required as a condition of the registration exemptions for foreign intermediaries, and whether such exemption is available for foreign intermediaries acting on behalf of international financial institutions.

DATES: The effective date for this Final Rule is February 5, 2021.

FOR FURTHER INFORMATION CONTACT: Joshua B. Sterling, Director, at 202-418-6056, jsterling@cftc.gov; with respect to the finalization of the 2016 Proposal: Frank N. Fisanich, Chief Counsel, at 202-418-5949 or ffisanich@cftc.gov; with respect to all other aspects of this release: Amanda Lesher Olear, Deputy Director, at 202-418-5283 or aolear@cftc.gov; Pamela Geraghty, Associate Director, at 202-418-5634 or pgeraghty@cftc.gov; Elizabeth Groover, Special Counsel, at 202-418-5985 or egroover@cftc.gov, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

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I. Background

A. Statutory and Regulatory Background

Section 1a(11) of the Commodity Exchange Act (CEA or Act)¹ defines the term "commodity pool operator" as any

¹ 7 U.S.C. 1a(11). See also 17 CFR 1.3 (defining "commodity interest" to include, inter alia, any contract for the purchase or sale of a commodity for future delivery, and any swap as defined in the CEA); Adaptation of Regulations to Incorporate Swaps, 77 FR 66288, 66295 (Nov. 2, 2012) (discussing the modification of the term "commodity interest" to include swaps). The Act is found at 7 U.S.C. 1, *et seq.* (2018), and the Commission's regulations are found at 17 CFR Ch. I (2020). Both are accessible through the Commission's website, <https://www.cftc.gov>.

person² engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, with respect to that commodity pool, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests. CEA section 1a(10) defines a “commodity pool” as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests.³ CEA section 4m(1) generally requires each person who satisfies the CPO definition to register as such with the Commission.⁴ With respect to CPOs, the CEA also authorizes the Commission, acting by rule or regulation, to include within or exclude from the term “commodity pool operator” any person engaged in the business of operating a commodity pool if the Commission determines that the rule or regulation will effectuate the purposes of the CEA.⁵

Additionally, CEA section 4(c), in relevant part with respect to the Final Rule, provides that the Commission, to promote responsible economic or financial innovation and fair competition, by rule, regulation, or order, after notice and opportunity for hearing, may exempt, among other things, any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to commodity interests from any provision of the Act.⁶ CEA section 4(c) authorizes the Commission to grant exemptive relief if the Commission determines, inter alia, that the exemption would be consistent with the “public interest.”⁷

To provide an exemption pursuant to section 4(c) of the Act with respect to registration as a CPO, the Commission must determine that the agreements, contracts, or transactions undertaken by the exempt CPO should not require registration, and that the exemption from registration would be consistent

with the public interest and the Act.⁸ The Commission must further determine that the agreement, contract, or transaction will be entered into solely between appropriate persons, and that it will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.⁹ The term “appropriate person” as used in CEA section 4(c) includes “a commodity pool formed or operated by a person subject to regulation under the Act.”¹⁰ The Commission has previously interpreted the clause “subject to regulation under the Act” as including persons who are exempt from registration or excluded from the definition of a registration category.¹¹

Part 3 of the Commission’s regulations governs the registration of intermediaries engaged in the offering and selling of, and the provision of advice concerning, all commodity interest transactions. Commission regulation 3.10(c)(3)(i), discussed in further detail below, provides, inter alia, that a person engaged in the activity of a CPO, commodity trading advisor (CTA), or introducing broker (IB), in connection with any commodity interest transaction executed bilaterally or made on or subject to the rules of any designated contract market (DCM) or swap execution facility (SEF), is not required to register as a CPO, CTA, or IB (relief referred to herein as the 3.10 Exemption), provided that:

1. The person is located outside the United States, its territories, and possessions (the United States or U.S.);
2. The person acts only on behalf of persons located outside the United States; and
3. The commodity interest transaction is submitted for clearing through a registered FCM.¹⁴

⁸ 7 U.S.C. 6(c)(2)(A).

⁹ 7 U.S.C. 6(c)(2)(B).

¹⁰ 7 U.S.C. 6(c)(3)(E).

¹¹ 77 FR 30596, 30655 (May 23, 2012) (finding, in the context of the eligible contract participant definition, that “construing the phrase ‘formed and operated by a person subject to regulation under the [CEA]’ to refer to a person excluded from the CPO definition, registered as a CPO or properly exempt from CPO registration appropriately reflects Congressional intent”).

¹² See, e.g., 17 CFR 3.10(a)(1)(i) (requiring the filing of a Form 7–R with the National Futures Association (NFA)).

¹³ 17 CFR 3.10(c) (providing exemptions from registration for certain persons).

¹⁴ 17 CFR 3.10(c)(3)(i).

Commission regulation 3.10(c)(2)(i) provides a similar exemption from registration for a person located outside the United States acting as an FCM.¹⁵

A person acting in accordance with the 3.10 Exemption remains subject to the antifraud provisions of, inter alia, CEA section 4o,¹⁶ but is otherwise not required to comply with those provisions of the CEA or Commission regulations applicable to any person registered in the relevant intermediary capacity,¹⁷ or persons required to be so registered.¹⁸ Of particular relevance to the amendments adopted herein regarding non-U.S. CPOs, the 3.10 Exemption provides that it is available to non-U.S. CPOs whose activities, in connection with any commodity interest transaction executed bilaterally or made on or subject to the rules of any DCM or SEF, are confined to acting on behalf of offshore commodity pools.¹⁹ This exemption was first adopted in 2007 (2007 Final Rule) and was based on a long-standing no-action position articulated by the Commission’s Office of General Counsel in 1976.²⁰

In adopting the 2007 Final Rule, the Commission agreed with commenters who cited its longstanding policy of focusing “customer protection activities upon domestic firms and upon firms soliciting or accepting orders from domestic users of the futures markets.”²¹ The Commission further stated that the protection of non-U.S. customers of non-U.S. firms may be best deferred to foreign regulators.²² The Commission noted its understanding that, pursuant to the terms of the 3.10

¹⁵ 17 CFR 3.10(c)(2)(i).

¹⁶ 7 U.S.C. 6o.

¹⁷ For purposes of this adopting release, the term “intermediary” includes persons acting in the capacity of an FCM, IB, CPO, or CTA. For more information, see “Intermediaries,” CFTC, available at <https://www.cftc.gov/IndustryOversight/Intermediaries/index.htm>.

¹⁸ 17 CFR 3.10(c)(3)(ii). As market participants, however, such persons remain subject to all other applicable provisions of the CEA and the Commission’s regulations promulgated thereunder. See, e.g., 7 U.S.C. 9 (prohibiting manipulation by any person with respect to a swap or futures transaction).

¹⁹ 17 CFR 3.10(c)(3)(i).

²⁰ Exemption from Registration for Certain Foreign Persons, 72 FR 63976, 63977 (Nov. 14, 2007) (2007 Final Rule). See also CFTC Staff Interpretative Letter 76–21.

²¹ 2007 Final Rule, 72 FR at 63977, quoting Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements, 48 FR 35248, 35261 (Aug. 3, 1983).

²² *Id.* The Commission also cited this policy position in the initial proposal discussing what ultimately would be adopted as Commission regulation 3.10(c)(3)(i). Exemption from Registration for Certain Foreign Persons, 72 FR 15637, 15638 (Apr. 2, 2007).

² 7 U.S.C. 1a(38); 17 CFR 1.3 (defining “person” to include individuals, associations, partnerships, corporations, and trusts).

³ 7 U.S.C. 1a(10).

⁴ 7 U.S.C. 6m(1).

⁵ 7 U.S.C. 1a(11)(B).

⁶ 7 U.S.C. 6(c)(1).

⁷ Conference Report, H.R. Report 102–978 at 8 (Oct. 2, 1992) (“The goal of providing the Commission with broad exemptive powers . . . is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.”).

Exemption, “[a]ny person seeking to act in accordance with any of the foregoing exemptions from registration should note that the prohibition on contact with U.S. customers applies to solicitation as well as acceptance of orders.”²³ Moreover, the Commission stated that, “[if] a person located outside the U.S. were to solicit prospective customers located in the U.S. as well as outside of the U.S., these exemptions would not be available, even if the only customers resulting from the efforts were located outside the U.S.”²⁴

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)²⁵ amended the definitions of “commodity pool operator” and “commodity pool” in the CEA to include those persons operating collective investment vehicles that engage in swaps,²⁶ which resulted in an expansion of the universe of persons captured within both statutory definitions.²⁷ When combined with the rescission of Commission regulation 4.13(a)(4) in 2012,²⁸ an increasing number of non-U.S. CPOs were required to either register with the Commission, or claim an available exemption or exclusion with respect to the operation of their commodity pools, regardless of whether such pools were offshore or offered to U.S. participants.

B. Recent Regulatory Proposals Related to Commission Regulation 3.10(c)

As discussed further below, on July 27, 2016, the Commission proposed to amend Commission regulation 3.10(c) (2016 Proposal) revising the conditions under which the exemption from intermediary registration would apply.²⁹ Generally, the 2016 Proposal would permit a foreign located person acting in the capacity of an FCM, IB, CTA, or CPO, to utilize an exemption from registration as such, provided that the foreign located person, in connection with any commodity interest transaction, acts solely on behalf of (1)

other foreign located persons, or (2) international financial institutions (IFIs), which were further defined in the 2016 Proposal’s proposed Commission regulation (c)(6)). The proposed amendments provided an exemption from registration without regard to whether such foreign located person cleared the commodity interest transaction.³⁰ In response to the 2016 Proposal, the Commission received six comments, most of which were supportive of those proposed amendments.³¹ The Commission, however, did not finalize the 2016 Proposal at that time.

In 2018, the Commission proposed, among other changes to its part 4 regulations, adding a new exemption from CPO registration to Commission regulation 4.13 (2018 Proposal) that would formally incorporate the relief provided by CFTC Staff Advisory 18–96 (Advisory 18–96) in the Commission’s CPO regulatory provisions.³² In the 2018 Proposal, the Commission noted that the proposed exemption based on Advisory 18–96 was intended to be claimed on a pool-by-pool basis, and stated that “[t]his characteristic would effectively differentiate the [proposed exemption] from the relief currently provided” under the 3.10 Exemption.³³ The Commission received several comments regarding the 2018 Proposal’s discussion of the differences between the proposed amendment to Commission regulation 4.13 and the existing 3.10 Exemption.³⁴

For instance, one commenter noted that the 3.10 Exemption “is widely relied on around the world by non-U.S. managers of offshore funds that are not offered to U.S. investors but that may trade in the U.S. commodity interest markets.”³⁵ This commenter further

noted that “CPO registration for these offshore entities with global operations is not a viable option[,]” due to the logistical and regulatory issues involved.³⁶ Another commenter stated that, “it is critical to bear in mind that the Commission . . . to our knowledge has never addressed, the separate and distinct question of whether an offshore CPO may rely on Rule 3.10(c)(3)(i) with respect to some of its offshore pools in combination with relying on other exemptions with respect to its other pools.”³⁷ Several other commenters expressed similar views and requested that the Commission affirm CPOs’ ability to claim the 3.10 Exemption on a pool-by-pool basis and to rely upon that exemption in addition to other exemptions, exclusions, or registration.³⁸

In 2019, the Commission withdrew the portion of the 2018 Proposal related to adopting the relief provided in Advisory 18–96 as a CPO registration exemption, and, in light of the comments received in response to its discussion of the 3.10 Exemption, undertook an inquiry as to whether the 3.10 Exemption should be amended to respond to the current CPO space and the issues articulated by commenters.³⁹ Based on the foregoing experience and history, and in consideration of the increasingly global nature of the commodity pool space, the Commission proposed certain amendments to the 3.10 Exemption on May 28, 2020, which were subsequently published in the **Federal Register** on June 12, 2020 (2020 Proposal).⁴⁰

C. The 2020 Proposal

The 2020 Proposal consisted of several proposed amendments to the 3.10 Exemption. Specifically, the Commission proposed amendments to the 3.10 Exemption such that non-U.S.

²³ 2007 Final Rule, 72 FR at 63977–63978.

²⁴ *Id.* at 63978.

²⁵ Public Law 111–203, H.R. 4173 (2010) (Dodd-Frank Act).

²⁶ Section 721 of the Dodd-Frank Act.

²⁷ See also Adaptation of Regulation to Incorporate Swaps, 77 FR 66288 (Nov. 2, 2012) (incorporating this expanded jurisdiction over swaps into existing Commission regulations).

²⁸ See Commodity Pool Operators and Commodity Trading Advisors; Compliance Obligations, 77 FR 11252, 11264 (Feb. 24, 2012). Former Commission regulation 4.13(a)(4) provided an exemption from registration as a CPO for operators of commodity pools offered and sold to sophisticated participants. See 17 CFR 4.13(a)(4) (2010).

²⁹ Exemption from Registration for Certain Foreign Persons, 81 FR 51824 (Aug. 5, 2016) (2016 Proposal).

³⁰ 2016 Proposal, 81 FR at 51827.

³¹ The public comment file for the 2016 Proposal is available on the Commission’s website. Comments for Proposed Rule 81 FR 51824, available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1724>. See *infra* pt. II.B. for additional discussion of the 2016 Proposal and Commission responses to those public comments.

³² Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors, 83 FR 52902 (Oct. 18, 2018) (2018 Proposal); CFTC Staff Advisory 18–96 (Apr. 11, 1996).

³³ 2018 Proposal, 83 FR at 52914.

³⁴ The comment file for the 2018 Proposal is also available on the Commission’s website. Comments for Proposed Rule 83 FR 52902, available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2925>.

³⁵ Comment Letter from the Asset Management Group of the Securities Industry and Financial Markets Association (SIFMA AMG), at 9 (Dec. 17, 2018), available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61922&SearchText=>

³⁶ *Id.* at 12.

³⁷ Comment Letter from Fried, Frank, Harris, Shriver, & Jacobson, LLP (Fried Frank), at 6 (Dec. 17, 2018), available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61920&SearchText=>.

³⁸ See, e.g., Comment Letter from Willkie, Farr, and Gallagher, LLP (Willkie), at 6 (Dec. 17, 2018), available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61927&SearchText=>; and Comment Letter from Alternative Investment Management Association (AIMA), at 6 (Dec. 17, 2018), available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61907&SearchText=>.

³⁹ Registration and Compliance Requirements for Commodity Pool Operators (CPOs) and Commodity Trading Advisors: Family Offices and Exempt CPOs, 84 FR 67355, 67357 (Dec. 10, 2019).

⁴⁰ Exemption from Registration for Certain Foreign Persons Acting as Commodity Pool Operators of Offshore Commodity Pools, 85 FR 35820 (Jun. 12, 2020) (2020 Proposal).

CPOs may rely on that relief on a pool-by-pool basis.⁴¹ The Commission also proposed an amendment confirming that the 3.10 Exemption, as revised, may be utilized along with other exemptions or exclusions available to CPOs generally, or CPO registration.⁴² The Commission further proposed a conditional safe harbor for non-U.S. CPOs who, by virtue of a pool's structure, cannot represent with absolute certainty that there are no U.S. participants in their operated offshore pool.⁴³ Finally, the Commission also proposed to provide an exception from the 3.10 Exemption's prohibition on U.S. participants, such that a U.S. controlling affiliate could provide initial capital to an offshore pool operated by its affiliated non-U.S. CPO without being considered a U.S. participant in that offshore pool.⁴⁴ In addition to the substantive amendments to the 3.10 Exemption proposed for the first time as part of the 2020 Proposal, the Commission also reopened the comment period associated with the 2016 Proposal for a period of 60 days.⁴⁵

II. Final Rule

After considering all of the comments received, and for the reasons stated by the Commission herein, the Commission is amending Commission regulation 3.10(c), in a manner generally consistent with the 2016 and 2020 Proposals, with certain adjustments resulting from commenters' suggestions and after additional consideration of the proposed regulatory text. The Commission will first generally summarize the public comments received addressing both the 2016 and 2020 Proposals. Then, in addition to the rulemaking history of Commission regulation 3.10(c) set forth above, the Commission will briefly explain the 2016 Proposal, respond to all of the relevant public comments received, and detail the amendments derived from the 2016 Proposal adopted in the Final Rule.⁴⁶ The Commission will then discuss the remaining 2020 Proposal amendments with respect to non-U.S. CPOs operating offshore pools pursuant to the 3.10 Exemption, summarize the 3.10 Exemption amendments being adopted, respond to the relevant public comments received, and explain the substance and rationale of any adjustments in approach from the 2020 Proposal to what the Commission is

adopting in the Final Rule today.⁴⁷ Finally, the Commission will explain its efforts to reconcile proposed amendments from both the 2016 and 2020 Proposals, which includes a non-substantive reorganization of Commission regulation 3.10(c).⁴⁸

A. General Comments in Response to the 2016 and 2020 Proposals

The Commission requested comment generally on all aspects of the 2020 Proposal, and specifically asked questions about potential additional conditions or limitations to the proposed relief that might be incorporated during finalization.⁴⁹ The comment period for the 2020 Proposal, along with the reopened comment period for the 2016 Proposal, expired on August 11, 2020, and the Commission received four relevant comment letters: One from an individual, one from a foreign intergovernmental organization, one submitted jointly by five industry professional and trade associations (collectively, the Industry Groups), and one submitted by an asset manager that operates globally.⁵⁰ Two of those comment letters also provided new or additional comments with respect to the 2016 Proposal.⁵¹ Finally, Commission staff also hosted one ex parte meeting to discuss aspects of the 2020 Proposal with an Industry Group.⁵²

The comments received by the Commission were, in general, strongly supportive of the 2020 Proposal.⁵³ Commenters largely agreed with the proposed amendments, positing that, if

adopted, the 2020 Proposal "would simplify compliance by eliminating the potential need for the CFTC to require registration and oversight of non-U.S. CPOs whose pools have no U.S. investors."⁵⁴ The Industry Groups also "applaud[ed] the Commission's actions in turning its attention to the increasingly global nature of the asset management space and proposing rule changes that will better align the express terms of its regulations with both the Commission's policy goals and current global practices."⁵⁵ Although offering support for the 2020 Proposal overall, commenters also suggested additional regulatory edits with respect to several specific issues raised by that release, and provided responses to the questions posed by the Commission.⁵⁶

As noted above, the Commission requested comment generally on the 2020 Proposal, but also posed several targeted questions about potential additional conditions for the proposed exception regarding the initial capital contributions of U.S. controlling affiliates in a non-U.S. CPO's offshore pool (Affiliate Contribution Exception).⁵⁷ In addition to commenting generally on the 2020 Proposal, the Industry Groups submitted the sole comment letter specifically responding to those questions. The Industry Groups stated that they do not support additional conditions on the Affiliate Contribution Exception, and that they believe such limitations "would not provide any additional protection to U.S. investors, customers, or the U.S. commodity interest markets."⁵⁸ For instance, the Commission queried whether the Affiliate Contribution Exception should more explicitly be intended for "seeding purposes," including whether it should "be conditioned on the investment being limited in time to one, two, or three years, after which time the investments of the controlling affiliate must be reduced to a *de minimis* amount of the pool's capital, such as 3 or 5 percent?"⁵⁹ Alternatively, the Industry Groups suggested a defined "purpose" for affiliate contributions, "for the purpose of establishing, or providing ongoing support to, the pool."⁶⁰

Regarding the nature of controlling affiliates, the Commission also queried

⁴⁷ See *infra* pts. II.C–G.

⁴⁸ See *infra* pt. II.H.

⁴⁹ 2020 Proposal, 85 FR at 35826 (asking three questions regarding the conditions of the proposed exception from the 3.10 Exemption for initial capital investments in a non-U.S. CPO's offshore pool by a U.S. controlling affiliate). See *also id.* at 35827 (asking, with respect to the 2016 Proposal, an additional question about the clearing of transactions otherwise covered by the 3.10 Exemption).

⁵⁰ The Commission received a total of five comment letters, one of which was either spam or otherwise not substantively relevant to the 2020 Proposal in any respect. For relevant comments on the 2020 Proposal, see Comment Letter from Mr. Chris Barnard (Aug. 11, 2020) (Barnard); Comment Letter from the European Stability Mechanism (Aug. 6, 2020) (ESM); Joint Comment Letter from AIMA, SIFMA AMG, the Investment Advisers Association (IAA), Investment Company Institute Global (ICI Global), and the Managed Funds Association (MFA) (Aug. 11, 2020) (Industry Group Letter), and Comment Letter from the Vanguard Group (Aug. 11, 2020) (Vanguard).

⁵¹ Industry Group Letter, at 12–13, and ESM, at 1–3.

⁵² The complete comment file for the 2020 Proposal can be found on the Commission's website. Comments for Proposed Rule 85 FR 35820, available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3122>.

⁵³ Industry Group Letter, at 2; Vanguard, at 2; Barnard, at 2; ESM, at 1.

⁵⁴ Barnard, at 2.

⁵⁵ Industry Group Letter, at 1.

⁵⁶ See, e.g., Vanguard, at 2–3; Industry Group Letter, at 2–15, app. A.

⁵⁷ 2020 Proposal, 85 FR at 35826. See *infra* pt. II.F for a more detailed discussion on the Affiliate Contribution Exception adopted in the Final Rule.

⁵⁸ Industry Group Letter, at 17.

⁵⁹ 2020 Proposal, 85 FR at 35826.

⁶⁰ Industry Group Letter, at 17.

⁴¹ 2020 Proposal, 85 FR at 35822.

⁴² 2020 Proposal, 85 FR at 35824.

⁴³ 2020 Proposal, 85 FR at 35823.

⁴⁴ 2020 Proposal, 85 FR at 35825.

⁴⁵ 2020 Proposal, 85 FR at 35826–35827.

⁴⁶ See *infra* pt. II.B.

whether the Affiliate Contribution Exception should “be limited to entities or persons that are otherwise financial institutions that are regulated in the United States to provide investor protections?”⁶¹ The Commission additionally inquired whether the Affiliate Contribution Exception should “only be available to U.S. controlling affiliates regulated by the Securities and Exchange Commission, a federal banking regulator, or an insurance regulator?”⁶² The Industry Groups stated that they do not believe any benefit would result from “limiting the affiliates that contribute capital to regulated entities” because it would further introduce the Commission “into the decision-making process for commercial decisions and resource allocation of global organizations,” and “also prevent the use of common practices for this type of funding, including holding companies and trust companies.”⁶³ One commenter also stated that a U.S. affiliate should not be required to “be regulated in the United States in order to qualify” for the Affiliate Contribution Exception.⁶⁴

The Commission also noted in the 2020 Proposal that one of the rationales behind the Affiliate Contribution Exception is the affiliate’s likely ability to demand that the non-U.S. CPO provide it with information necessary to assess the offshore pool’s operations and performance.⁶⁵ Because it may not be possible to ascertain with certainty whether such information must be provided to a U.S. controlling affiliate under laws applicable to the non-U.S. CPO, the Commission queried in the 2020 Proposal whether the Affiliate Contribution Exception should be “conditioned on there being an obligation on the non-U.S. CPO that is legally binding in its home jurisdiction to provide the U.S. controlling affiliate with information regarding the operation of the offshore pool by the affiliated non-U.S. CPO?”⁶⁶ The Industry Groups noted that “an organization’s decision to contribute capital to support the operations of an offshore CPO is a commercial business decision, not an investment decision of the type that Part 4 information addresses.”⁶⁷ Therefore, the Industry Groups stated, there is “no need for the Commission to determine what type of information global business

organizations will need to exercise their business judgment in this regard or for the Commission otherwise to intervene in the organization’s decision-making process.”⁶⁸ The Commission did not receive any comments supporting the additional limitations for which the Commission specifically solicited public feedback in the 2020 Proposal.

B. Reconsidering the 2016 Proposal and Comments Received

In addition to reopening the comment period with respect to the 2016 Proposal, the Commission queried specifically whether Commission regulation 3.10 should require commodity interest transactions of foreign located persons or IFIs that are required or intended to be cleared on a registered derivatives clearing organization (DCO) to be submitted for clearing through an FCM registered in accordance with section 4d of the Act, unless such foreign located person or IFI is itself a clearing member of such registered DCO.⁶⁹ As mentioned above, the Commission received two additional comments relevant to the 2016 Proposal as a result of the reopening of the 2016 Proposal’s comment period. After a brief explanation of the 2016 Proposal, the Commission will discuss and address these additional comments, along with the public comments originally received in 2016, and outline the Final Rule amendments resulting from the 2016 Proposal below.

1. The 2016 Proposal’s Amendments to Commission Regulation 3.10(c)

At the time the 2016 Proposal was published, and until the Final Rule’s amendments become effective, Commission regulation 3.10(c)(2)–(c)(3) generally provides an exemption from registration, subject to specific conditions, for certain foreign located persons acting as intermediaries (collectively, Foreign Intermediaries) with respect to persons also located outside the U.S., even though such transactions may be executed bilaterally, or on or subject to the rules of a DCM or SEF.⁷⁰ With respect to activities involving commodity interest transactions executed bilaterally, or made on or subject to the rules of any DCM or SEF, Commission regulation 3.10(c)(3)(i) provides an exemption from registration as a CPO, CTA, or IB, where the person is a foreign located person,

acting only on behalf of other foreign located persons, and the commodity interest transaction is submitted for clearing through a registered FCM.⁷¹ Commission regulation 3.10(c)(2)(i) currently provides a similar exemption from registration for any Foreign Intermediary acting as an FCM.⁷²

Pursuant to the 2016 Proposal, the Commission proposed to amend Commission regulations 3.10(c)(2) and (c)(3) to revise the conditions under which those exemptions from registration would apply.⁷³ Specifically, the 2016 Proposal’s amendments would permit a Foreign Intermediary to be eligible for an exemption from registration, if the Foreign Intermediary, in connection with a commodity interest transaction, only acts on behalf of (1) foreign located persons, or (2) IFIs,⁷⁴ without regard to whether such persons or institutions clear such commodity interest transaction.⁷⁵ It was the Commission’s intention in 2016—and remains so now—to promulgate regulations consistent with its longstanding policy of focusing its customer protection activities upon domestic firms, and upon firms soliciting or accepting orders from domestic participants.⁷⁶

2. Responsive Comments Received Regarding the 2016 Proposal

In response to the 2016 Proposal, the Commission originally received six comments⁷⁷ and subsequently received

⁷¹ 17 CFR 3.10(c)(3)(i).

⁷² 17 CFR 3.10(c)(2)(i).

⁷³ 2016 Proposal.

⁷⁴ For purposes of the 2016 Proposal, the Commission defined IFIs as those multinational institutions defined in the Commission’s previous rulemakings and staff no-action letters, *i.e.*, International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, Bank for Economic Cooperation and Development in the Middle East and North Africa, Inter-American Investment Corporation, Council of Europe Development Bank, Nordic Investment Bank, Caribbean Development Bank, European Investment Bank and European Investment Fund (the International Bank for Reconstruction and Development, International Finance Corporation, and Multilateral Investment Guarantee Agency are parts of the World Bank Group). 2016 Proposal, 81 FR at 51825, *citing* Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,” 77 FR 30596, 30692, n.1180 (May 23, 2012) (Entities Final Rule).

⁷⁵ 2016 Proposal, 81 FR at 51826.

⁷⁶ *Id.*

⁷⁷ The original six comments were submitted by: AIMA; the CME Group, Inc. (CME); IAA; MFA; and two individuals unaffiliated with any registrant or

⁶¹ 2020 Proposal, 85 FR at 35826.

⁶² *Id.*

⁶³ Industry Group Letter, at 18.

⁶⁴ Vanguard, at 2.

⁶⁵ 2020 Proposal, 85 FR at 35826.

⁶⁶ *Id.*

⁶⁷ Industry Group Letter, at 18.

⁶⁸ *Id.* (noting that “requiring this exception to be conditioned on there being a legally binding obligation in the non-U.S. CPO’s home jurisdiction would create unnecessary non-U.S. legal analysis on the part of the affiliate”).

⁶⁹ 2020 Proposal, 85 FR at 35827.

⁷⁰ 17 CFR 3.10(c)(2)–(c)(3). *See supra* pt. I.A.

two additional comments,⁷⁸ as a result of reopening the comment period pursuant to the 2020 Proposal. AIMA, CME, MFA, and the Industry Groups commented that the 2016 Proposal would improve market efficiency and increase liquidity in U.S. markets by eliminating the regulatory burden associated with Commission registration imposed on Foreign Intermediaries acting solely on behalf of other foreign located persons.⁷⁹ In particular, MFA also commented that foreign located persons would generally not have any expectation that a Foreign Intermediary would be subject to Commission oversight.⁸⁰ The CME also noted that the proposed amendments would positively impact the likelihood of productive cooperation concerning the regulation of derivatives across all jurisdictions going forward.⁸¹ One individual commented that Foreign Intermediaries should be required to register with the Commission no matter the circumstance.⁸² The other individual did not address the 2016 Proposal in any manner. Regarding the two additional comment letters received after the 2020 Proposal, the Industry Groups and ESM were both strongly supportive of the Commission finalizing amendments from the 2016 Proposal; additionally, ESM requested that it be explicitly included in the definition of “international financial institution.”⁸³

derivatives industry organization. Comments for Proposed Rule 81 FR 51824, available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1724>. See specifically, Comment Letter from AIMA (Sept. 6, 2016) (AIMA), available at [https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61002&SearchText=](https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61002&SearchText=;); Comment Letter from CME (Aug. 23, 2016) (CME), available at [https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60997&SearchText=](https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60997&SearchText=;); Comment Letter from IAA (Sept. 6, 2016) (IAA), available at [https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61003&SearchText=](https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61003&SearchText=;); Comment Letter from MFA (Sept. 2, 2016) (MFA), available at [https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61000&SearchText=](https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61000&SearchText=;).

⁷⁸ The two additional 2020 comment letters addressing the 2016 Proposal are the jointly submitted Industry Group Letter and the comment letter from ESM, described above as a foreign intergovernmental organization. Comments for Proposed Rule 85 FR 35820, available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3122>. See *supra* pt. II.A.

⁷⁹ AIMA, at 1; CME, at 1–2; MFA, at 1; Industry Group Letter, at 12–13.

⁸⁰ MFA, at 1.

⁸¹ CME, at 2.

⁸² Comment Letter from “Jean Publieee” (Aug. 8, 2016), available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60987&SearchText=>.

⁸³ Industry Group Letter, at 13; ESM, at 2.

3. Finalizing the 2016 Proposal

After considering all of the comments, the Commission is finalizing its amendments to Commission regulation 3.10(c) from the 2016 Proposal, with two modifications. First, the Commission originally proposed to amend the language of the exemptions to remove the requirement that any commodity interest transaction shall be submitted for clearing through a registered FCM.⁸⁴ In doing so, the Commission recognized that not all commodity interest transactions are subject to a clearing requirement under the CEA or Commission regulations, or even available for clearing by any DCO.⁸⁵ However, by removing the clearing condition, the Commission inadvertently failed to reiterate that those transactions that are required to be cleared must be cleared by a clearing member of the relevant DCO. The proposed removal of such language may have had the unintended consequence of leading some market participants to misconstrue the Commission’s purpose as an intention to permit unregistered foreign located persons to become clearing members on a DCO to clear commodity interest transactions on behalf of customers that were also foreign located persons. Thus, the Final Rule provides that the exemptions from registration in Commission regulation 3.10(c) are conditioned on (1) clearing on a DCO any commodity interest transaction that is required or intended to be cleared on a registered DCO; and (2) an additional requirement that such transactions must be cleared through a registered FCM, unless the Foreign Intermediary’s customer is a clearing member of the relevant DCO.

Second, the Commission is modifying the definition of “international financial institution” proposed in 2016 to be consistent with the definition of U.S. person recently adopted by the Commission in its final cross-border rules for swap dealers (SDs) and major swap participants (MSPs) (Cross-Border Final Rule), which generally excludes IFIs from the definition of U.S. person.⁸⁶ Consistent with the Cross-Border Final Rule, the Commission is defining the term “international financial institutions” in Commission regulation 3.10(c) to include the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank,

the Asian Development Bank, the African Development Bank, the United Nations, the IFIs that are defined in 22 U.S.C. 262(c)(2), those institutions that are defined as “multilateral development banks” in the European Union’s regulation on “OTC derivatives, central counterparties and trade repositories,”⁸⁷ their agencies and pension plans, and any other similar international organizations, and their agencies and pension plans.⁸⁸

The IFI definition adopted by the Final Rule also includes two additional institutions identified in CFTC Staff Letters 17–34⁸⁹ and 18–13.⁹⁰ In CFTC Staff Letter 17–34, Commission staff provided relief from CFTC margin requirements to swaps between SDs and ESM,⁹¹ and in CFTC Staff Letter 18–13, Commission staff identified the North American Development Bank as an additional entity that should be

⁸⁷ Cross-Border Final Rule, 85 FR at 56937–56938; Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC Derivative Transactions, Central Counterparties and Trade Repositories, Article 1(5(a)) (July 4, 2012), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0648>. Article 1(5(a)) references Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0048>. The definitions overlap, but together they include the following: The International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, Bank for Economic Cooperation and Development in the Middle East and North Africa, Inter-American Investment Corporation, Council of Europe Development Bank, Nordic Investment Bank, Caribbean Development Bank, European Investment Bank and European Investment Fund. As noted above, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, and the Multilateral Investment Guarantee Agency are parts of the World Bank Group.

⁸⁸ See *infra* new Commission regulation 3.10(c)(1)(iii) (adopting a formal IFI definition for purposes of applying the exemptions otherwise established by that provision).

⁸⁹ CFTC Staff Letter No. 17–34 (Jul. 24, 2017), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-34.pdf>. See also CFTC Staff Letter No. 19–22 (Oct. 16, 2019), available at <https://www.cftc.gov/csl/19-22/download>.

⁹⁰ CFTC Staff Letter No. 18–13 (May 16, 2018), available at <https://www.cftc.gov/csl/18-13/download>.

⁹¹ CFTC Staff Letter No. 17–34. In addition, in May 2020, the Commission adopted an amendment to Commission regulation 23.151 to exclude ESM from the definition of “financial end user,” which will have the effect of excluding swaps between certain SDs and ESM from the Commission’s uncleared swap margin requirements. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 27674 (May 11, 2020).

⁸⁴ 2016 Proposal, 81 FR at 51826.

⁸⁵ *Id.*

⁸⁶ Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 FR 56924, 56937–38 (Cross-Border Final Rule).

considered an IFI for purposes of applying the SD and MSP definitions.⁹² The Commission concludes that it is appropriate to include these two entities in the IFI definition adopted by the Final Rule because the status of both entities as multinational organizations formed for public purposes is the same as that of the other already identified IFIs. Therefore, new Commission regulation 3.10(c)(1)(iii) lists specific IFIs, with these two additions. The IFI definition also includes a catch-all for “any other similar international organizations, and their agencies and pension plans,” which the Commission intends to extend the definition to any of the entities discussed above that are not explicitly listed in the definition.

As the Commission recognized in the 2016 Proposal, IFIs are operated to satisfy public purposes and have as their members sovereign nations from around the world. Although such institutions may have headquarters or another significant presence in the United States, the Commission recognizes that the unique attributes and multinational status of these institutions do not warrant treating them as domestic persons for purposes of the intermediary registration exemptions in Commission regulation 3.10(c). The status of IFIs as multinational member agencies leads the Commission to recognize a need to mitigate restraints on the ability of IFIs to enter into transactions in all member countries in conjunction with promoting global economic development and fulfilling other public purposes. The Commission has determined that this purpose is better served by defining “international financial institution” to be consistent with the Cross-Border Final Rule because the list of IFIs as proposed in the 2016 Proposal was limited to a specified list and may have required amendment from time to time.

C. Pool-by-Pool Exemption

The 2020 Proposal would amend the 3.10 Exemption such that non-U.S. CPOs could avail themselves of the relief thereunder on a pool-by-pool basis, by specifying that the availability of the 3.10 Exemption would be determined by whether all of the participants in a particular offshore commodity pool are located outside the United States.⁹³ The Commission stated its preliminary belief that this

amendment would appropriately focus Commission oversight on those pools that solicit and/or accept persons located in the United States as pool participants.⁹⁴ The Commission further noted several developments in the pooled investment space since the original adoption of the 3.10 Exemption that, in the Commission’s preliminary opinion, also supported the amendments in the 2020 Proposal.⁹⁵ Specifically, the Commission observed that Congress in 2010, through the Dodd-Frank Act, expanded the Commission’s jurisdiction to include swaps and rolling spot retail foreign exchange transactions, and that, when combined with the rescission or revision of certain CPO exemptions and exclusions, this expanded authority resulted in a significant increase in the number of entities captured within the definition of CPO.⁹⁶

In considering the propriety of the pool-by-pool exemption set forth in the 2020 Proposal, the Commission also noted the increasing globalization of the commodity pool industry, observing that, in contrast with the pool industry at the time of the original adoption of Commission regulation 3.10(c)(3)(i), several of today’s largest CPOs, when measured by assets under management, are located outside the United States.⁹⁷ The Commission noted further that these larger CPOs typically operate many different commodity pools simultaneously, including some pools for U.S. investors and other pools for investors outside of the United States.⁹⁸ Therefore, the Commission preliminarily concluded that the 3.10 Exemption should be amended to reflect the Commission’s regulatory interests in such an integrated international investment management environment, which the Commission preliminarily believed would be accomplished through the 2020 Proposal.⁹⁹

The Commission received one comment explicitly addressing the proposed pool-by-pool availability of the 3.10 Exemption in the 2020 Proposal.¹⁰⁰ The Industry Groups stated their strong support for “the revised structure of the 3.10 Exemption that the Commission has proposed, which clearly and expressly provides for

reliance on the exemption on a pool-by-pool basis.”¹⁰¹ The Industry Groups further stated their agreement with the Commission’s preliminary belief that the proposed amendments “‘better reflect the current state of operations of CPOs’ and more clearly align the text of the rule with the Commission’s policy goals.”¹⁰² They also noted their belief that “[t]he intention to permit an exempt or registered non-U.S. offshore CPO to rely on the 3.10 Exemption on a pool-by-pool basis is crystal clear, both in the language of the proposed amendment and the Release.”¹⁰³

After considering the comments received, the Commission has determined to finalize the 2020 Proposal so that non-U.S. CPOs may utilize the 3.10 Exemption for their offshore commodity pools on a pool-by-pool basis. As such, the Commission is amending the 3.10 Exemption for non-U.S. CPOs, as proposed, to specify that its availability would be determined, in part, by whether all of the participants in a particular offshore pool are foreign located persons.¹⁰⁴ Permitting non-U.S. CPOs to rely upon the relief provided by the 3.10 Exemption on a pool-by-pool basis will further allow the Commission to focus its resources on the oversight of CPOs operating pools offered and sold to participants located in the U.S., *i.e.*, the Commission’s primary customary protection mandate. Therefore, the Commission concludes that the Final Rule properly tailors the 3.10 Exemption to address the increasingly global nature of the investment management space since 2007, without compromising the Commission’s mission of protecting U.S. pool participants and effectively regulating CPOs managing U.S. assets.

For the reasons stated above, the Commission determines that amending the 3.10 Exemption to provide relief from registration to non-U.S. CPOs for their offshore pools on a pool-by-pool basis is an appropriate exercise of its exemptive authority under CEA section 4(c). The persons involved in the transactions subject to the exemptive relief provided herein are “appropriate persons,” as discussed in the 2020 Proposal, because the term “appropriate person” as used in CEA section 4(c)

⁹² CFTC Staff Letter 18–13. *See also* CFTC Staff Letter 17–59 (Nov. 17, 2017) (providing no-action relief from the swap clearing requirement of section 2(h)(1) of the CEA), available at <https://www.cftc.gov/cs/17-59/download>.

⁹³ 2020 Proposal, 85 FR at 35822–35823.

⁹⁴ 2020 Proposal, 85 FR at 35823.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Industry Group Letter, at 10. *See also* Vanguard, at 2 (expressing support for the 2020 Proposal in general and the substantive comments from the Industry Groups); Barnard, at 2 (expressing support for the 2020 Proposal generally).

¹⁰¹ Industry Group Letter, at 10.

¹⁰² *Id.*, quoting 2020 Proposal, 85 FR at 35822.

¹⁰³ *Id.* at 11.

¹⁰⁴ 2020 Proposal, 85 FR at 35831 (proposing Commission regulation 3.10(c)(3)(ii) to provide this relief on a pool-by-pool basis to qualifying non-U.S. CPOs for their offshore pools). *See infra* new Commission regulation 3.10(c)(5)(i) (retaining that proposed language and updating solely to reflect the adoption of defined terms from the 2016 Proposal, including “foreign located person”).

includes “a commodity pool formed or operated by a person subject to regulation under the Act.”¹⁰⁵ The Commission has previously interpreted the clause “subject to regulation under the Act” as including persons who are exempt from registration or excluded from the definition of a registration category.¹⁰⁶ Consistent with its preliminary belief in the 2020 Proposal, the Commission believes that clearly enabling non-U.S. CPOs to avoid the additional organizational complexity associated with separately organizing their offshore and domestic facing commodity pool businesses may result in more non-U.S. CPOs undertaking to design and offer pools for persons in the United States. Moreover, this could, in turn, result in a greater diversity of commodity pools offered and/or sold to persons in the United States, and this increased competition amongst commodity pools and their CPOs could broadly foster additional innovation in the commodity pool space, already one of the more dynamic sectors regulated by the Commission. Further, this potential for increased competition and variation in commodity pools and CPOs resulting from the Final Rule will further promote the vibrancy of the U.S. commodity interest markets.

The Commission concludes that the amendments adopted herein will not have a material adverse effect on the ability of the Commission or any DCM to discharge their duties under the Act, because non-U.S. CPOs relying on the 3.10 Exemption, as amended by the Final Rule, with respect to their offshore commodity pools will remain subject to the statutory and regulatory obligations imposed on all participants in the U.S. commodity interest markets.¹⁰⁷ This conclusion is consistent with section 4(d) of the Act, which provides that any exemption granted pursuant to CEA section 4(c) will not affect the authority of the Commission to conduct investigations in order to determine compliance with the requirements or conditions of such exemption or to take enforcement action for any violation of any provision of the Act or any rule,

regulation or order thereunder caused by the failure to comply with or satisfy such conditions or requirements.¹⁰⁸ Further, to the extent a non-U.S. CPO operates both offshore and domestic commodity pools, these amendments to the 3.10 Exemption do not restrict or negatively affect the Commission’s statutory and regulatory authority applicable to the commodity pool and intermediary activities of the non-U.S. CPO involving persons located in the United States. Rather, this aspect of the Final Rule simply reflects the Commission focusing its regulatory resources on U.S. pool participants and the firms soliciting them for trading commodity interests, which are squarely within its customer protection mandate.¹⁰⁹ Finally, under the Final Rule, the Commission retains the authority to take enforcement action against any non-U.S. CPO claiming the 3.10 Exemption based on its activities within the U.S. commodity interest markets, consistent with the Commission’s authority regarding market participants generally.

D. Utilizing the 3.10 Exemption Concurrent With Other Regulatory Relief Available to CPOs

As discussed above, the Commission proposed that the 3.10 Exemption for non-U.S. CPOs be available on a pool-by-pool basis. Consistent with those proposed amendments, and to address the concerns articulated by commenters to the 2018 Proposal,¹¹⁰ the Commission also proposed to explicitly provide that a non-U.S. CPO may claim the 3.10 Exemption for its offshore pool(s), while such non-U.S. CPO also claims another registration exemption or regulatory exclusion with respect to other pools it operates, *e.g.*, the *de minimis* exemption under Commission regulation 4.13(a)(3),¹¹¹ an exclusion from the CPO definition under Commission regulation 4.5,¹¹² or registers with respect to such pools.¹¹³ As noted in the 2020 Proposal and confirmed by the responsive comments received, the Commission understands that this practice is known colloquially as the ability to “stack” exemptions.

Absent the finalization of this amendment, the 3.10 Exemption would not have a provision that expressly contemplates its simultaneous use with other exemptions or exclusions available under other Commission

regulations. This contrasts with the language in Commission regulation 4.13(f), for example, which states that the filing of a notice of exemption from registration under that section will not affect the ability of a person to qualify for exclusion from the definition of the term “commodity pool operator” under § 4.5 in connection with its operation of another trading vehicle that is not covered under § 4.13.¹¹⁴ In the 2020 Proposal, the Commission stated its preliminary belief that non-U.S. CPOs relying on the 3.10 Exemption should have the ability to rely on other regulatory exemptions or exclusions that they qualify for, just like any other CPO.¹¹⁵ The Commission noted that it independently developed the terms under which CPOs of U.S. commodity pools may claim registration relief, and the fact that a non-U.S. CPO operates both offshore and U.S. commodity pools does not undermine the rationale providing the foundation for other regulatory relief available to CPOs generally.¹¹⁶ The Commission therefore preliminarily concluded that a non-U.S. CPO relying upon the 3.10 Exemption for one or more of its offshore pools should not, by virtue of that reliance, be foreclosed from utilizing other relief generally available to CPOs of U.S. pools.¹¹⁷

The Commission received one comment regarding the ability to combine the 3.10 Exemption with either registration or other available CPO exemptions or exclusions. The Industry Groups strongly supported this aspect of the 2020 Proposal because it “clearly and expressly provides for reliance on the [3.10 E]xemption on a pool-by-pool basis and also, in a separate provision, expressly acknowledges the ability to combine or ‘stack’ exemptions.”¹¹⁸ They did, however, suggest removing from the proposed amendment the specific references to Commission regulations 4.13 and 4.5, so as to better align the provision with the Commission’s stated intentions in the 2020 Proposal, *i.e.*, to permit the 3.10 Exemption to be broadly combinable with other available exemptions or exclusions, or registration.¹¹⁹

After considering the comments received, and for the reasons stated in

¹¹⁴ 17 CFR 4.13(f).

¹¹⁵ 2020 Proposal, 85 FR at 35825.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Industry Group Letter, at 10.

¹¹⁹ *Id.* at 12 (citing the 2020 Proposal, 85 FR at 25824–25, and stating that the Commission repeatedly describes the provision “as permitting simultaneous reliance on different exemptions or registration, giving examples of such exemptions, but without limiting the exemptions in question”).

¹⁰⁵ 7 U.S.C. 6(c)(3)(E).

¹⁰⁶ 77 FR at 30655 (finding, in the context of the eligible contract participant definition, that construing the phrase “formed and operated by a person subject to regulation under the [CEA]” to refer to a person excluded from the CPO definition, registered as a CPO or properly exempt from CPO registration appropriately reflects Congressional intent).

¹⁰⁷ *See, e.g.*, 7 U.S.C. 9 (prohibiting the use or employment of any manipulative or deceptive device in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity).

¹⁰⁸ 7 U.S.C. 6(d).

¹⁰⁹ 2020 Proposal, 85 FR at 35823.

¹¹⁰ *See, e.g.*, AIMA, at 6; Willkie, at 6.

¹¹¹ 17 CFR 4.13(a)(3).

¹¹² 17 CFR 4.5.

¹¹³ 2020 Proposal, 85 FR at 35824–25. *See infra* new Commission regulation 3.10(c)(5)(iv).

the 2020 Proposal, the Commission is adopting the proposed amendment permitting the 3.10 Exemption to be maintained concurrently with CPO registration and/or other exemptions or exclusions otherwise available to the claiming non-U.S. CPO. The Commission agrees that it is not necessary for the exclusions and exemptions available under Commission regulations 4.5 and 4.13 to be explicitly enumerated therein. Although the relief provided by Commission regulations 4.5 and 4.13 is the predominant means by which commodity pools are operated without the registration of a CPO, those provisions are not the sole source of such relief available to CPOs for their pools. Therefore, the Final Rule adopts the provision permitting the “stacking” of the 3.10 Exemption with either registration or other available relief from CPO regulation by the Commission, without the specific references to Commission regulations 4.5 and 4.13.¹²⁰

E. The Safe Harbor for Non-U.S. CPOs With Respect to Inadvertent U.S. Participants in Their Offshore Pools

The 2020 Proposal also proposed a safe harbor for non-U.S. CPOs that have taken reasonable actions designed to minimize the possibility that participation units in the operated offshore pool are being offered or sold to persons located in the United States. The Commission understands that some non-U.S. CPOs may not be able to represent with absolute certainty that they are acting only on behalf of foreign located persons invested in their offshore pools, as such non-U.S. CPOs may not have complete visibility into the ultimate beneficial ownership of their offshore pool participation units. Pursuant to the proposed safe harbor, a non-U.S. CPO would be permitted to engage in the U.S. commodity interest markets on behalf of an offshore pool for which it cannot represent with absolute certainty that all of the pool participants are offshore, as required by the 3.10 Exemption, provided that such non-U.S. CPO meets the following conditions:

1. The offshore pool’s offering materials and any underwriting or distribution agreements include clear, written prohibitions on the offshore pool’s offering to participants located in the United States and on U.S. ownership of the offshore pool’s participation units;

2. The offshore pool’s constitutional documents and offering materials: (a) Are reasonably designed to preclude

persons located in the United States from participating therein, and (b) include mechanisms reasonably designed to enable the non-U.S. CPO to exclude any persons located in the United States who attempt to participate in the offshore pool notwithstanding those prohibitions;

3. The non-U.S. CPO exclusively uses non-U.S. intermediaries for the distribution of participations in the offshore pool;

4. The non-U.S. CPO uses reasonable investor due diligence methods at the time of sale to preclude persons located in the United States from participating in the offshore pool; and

5. The offshore pool’s participation units are directed and distributed to participants outside the United States, including by means of listing and trading such units on secondary markets organized and operated outside of the United States, and in which the non-U.S. CPO has reasonably determined participation by persons located in the United States is unlikely.

With respect to this proposed safe harbor, the Commission stated its preliminary expectation that a non-U.S. intermediary would include a non-U.S. branch or office of a U.S. entity, or a non-U.S. affiliate of a U.S. entity, provided that the distribution takes place exclusively outside of the United States.¹²¹

The Commission also stated its preliminary belief that satisfying the criteria of the proposed safe harbor would serve as an indication that a non-U.S. CPO is exercising sufficient diligence with respect to those circumstances within its control to minimize the possibility of engaging with persons located in the United States concerning the offered offshore pool.¹²² Moreover, the Commission stated its preliminary belief that, if a non-U.S. CPO meets the five factors in the proposed safe harbor, the likely absence of U.S. participants is sufficiently ensured so as to allow reliance on the 3.10 Exemption.¹²³ As with any of the Commission’s other registration exemptions available to CPOs generally, the Commission expressed in the 2020 Proposal its expectation that non-U.S. CPOs claiming the 3.10 Exemption would maintain adequate documentation to demonstrate compliance with the terms of the safe harbor.¹²⁴

The Commission received only one comment regarding the proposed safe

harbor. The commenter supported it, saying that “[t]he proposed safe harbor provides adequate provisions that will simplify compliance with no loss of regulatory amenity.”¹²⁵

Accordingly, upon consideration of the comments, and consistent with the rationale expressed in the 2020 Proposal, the Commission is adopting the safe harbor as proposed. The Commission believes, as it did in the 2020 Proposal, that this amendment is an appropriate exercise of the Commission’s exemptive authority under CEA section 4(c). The persons involved in the transactions subject to the exemptive relief provided herein are “appropriate persons,” as discussed in the 2020 Proposal, because the term “appropriate person” as used in CEA section 4(c) includes “a commodity pool formed or operated by a person subject to regulation under the Act.”¹²⁶ The Commission has previously interpreted the clause “subject to regulation under the Act” as including persons who are exempt from registration or excluded from the definition of a registration category.¹²⁷ This safe harbor may promote responsible economic or financial innovation and fair competition in the U.S. commodity interest markets generally, thereby increasing their vibrancy and liquidity.¹²⁸ The safe harbor adopted herein permits a non-U.S. CPO of an offshore pool, by taking defined steps designed to mitigate the risk of U.S. participation in the offshore pool, to continue to qualify for the 3.10 Exemption, and thus, avoid being regulated both by its regulatory authority in its home jurisdiction and by the Commission. This effectively places the non-U.S. CPO on an equal footing with those domestic CPOs solely regulated by the Commission because each is generally subject to a single, appropriate regulatory regime with respect to the operation of its commodity pools. Additionally, the presence and activity of additional offshore pools with trading strategies developed outside the United States creates a diversity of viewpoint in the U.S. commodity interest markets, which could encourage innovation and competition by domestic CPOs as well.

¹²⁵ Barnard, at 2.

¹²⁶ 7 U.S.C. 6(c)(3)(E).

¹²⁷ 77 FR at 30655 (finding, in the context of the eligible contract participant definition, that construing the phrase “formed and operated by a person subject to regulation under the [CEA]” to refer to a person excluded from the CPO definition, registered as a CPO or properly exempt from CPO registration appropriately reflects Congressional intent).

¹²⁸ 7 U.S.C. 6(c).

¹²¹ 2020 Proposal, 85 FR at 35824.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁰ See *infra* new Commission regulation 3.10(c)(5)(iv).

Moreover, providing a safe harbor enabling non-U.S. CPOs to utilize the 3.10 Exemption, subject to appropriate conditions minimizing possible U.S. participants in the covered offshore pools, may result in more non-U.S. CPOs and their offshore pools choosing to trade in the U.S. commodity interest markets, which adds liquidity to those markets and thereby promotes more efficient price discovery therein. Importantly, the adoption of the safe harbor will not have a material adverse effect on the ability of the Commission to discharge its regulatory duties under the Act. Pursuant to CEA section 4(d), the Commission expressly retains the statutory authority to conduct investigations in order to determine compliance with the requirements or conditions of such exemption, or to take enforcement action for any violation of any provision of the CEA or any rule, regulation, or order thereunder caused by the failure to comply with or satisfy such conditions or requirements, notwithstanding this amendment.¹²⁹ Finally, as noted above, the Commission retains the authority to take enforcement action against any non-U.S. CPO claiming the 3.10 Exemption based on their activities within the U.S. commodity interest markets. Nothing in the Final Rule, including the adoption of this safe harbor, negatively affects or restricts the Commission's statutory and regulatory authority applicable to the commodity pool and intermediary activities of a non-U.S. CPO involving persons located in the United States. Therefore, the Commission concludes that the safe harbor, as adopted herein, is an appropriate exercise of its authority pursuant to section 4(c) of the Act.¹³⁰

F. Exception for Initial Capital Contributions by U.S. Affiliates of a Non-U.S. CPO to Its Offshore Pools

The 2020 Proposal also proposed an Affiliate Contribution Exception, providing that initial capital contributed by a non-U.S. CPO's U.S. controlling affiliate to the non-U.S. CPO's offshore commodity pool would not affect the eligibility of the non-U.S. CPO for the 3.10 Exemption with respect to that offshore pool.¹³¹ To that end, despite its initial capital contribution(s), the U.S. controlling affiliate would not be considered a "participant" for purposes of determining whether all of the offshore pool's participants are located outside of the United States, as required

by the 3.10 Exemption.¹³² The Commission noted that the term "control" in this proposed provision: (1) Was intended to provide a meaningful degree of protection and transparency with respect to the controlling affiliate's contribution of initial capital to the non-U.S. CPO's offshore commodity pool; and (2) would be defined, consistent with part 49 of its regulations, as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.¹³³ As discussed in more detail below, the Commission proposed multiple conditions and limitations to the Affiliate Contribution Exception: (1) The U.S. affiliate must "control," as defined in Commission regulation 49.2(a)(4), the non-U.S. CPO of the offshore pool; (2) only contributions considered to be "initial capital contributions," *i.e.*, those made at or near the inception of an offshore commodity pool, are covered by the exception; (3) interests in the U.S. affiliate are not being marketed as an investment or asset that provides exposure to the U.S. commodity interest markets; and (4) the U.S. affiliate must not be subject to a statutory disqualification, ongoing registration suspension or bar, prohibition on acting as a principal, or trading ban with respect to the U.S. commodity interest markets.¹³⁴

The Commission received two comment letters addressing and discussing the Affiliate Contribution Exception in the 2020 Proposal. Both commenters generally supported the Commission's proposed Affiliate Contribution Exception. Vanguard strongly supported this aspect of the 2020 Proposal, but stated its belief that "two changes would enhance the Proposal, consistent with the Commission's mandate to protect U.S. commodity pool participants."¹³⁵ The Industry Groups also strongly supported the proposed Affiliate Contribution Exception. This approach, the Industry Groups explained, as reflected in the Commission's own staff relief letters and certain regulatory provisions, "recognizes that these [affiliate] capital contributions are not 'investments'

made for the purpose of seeking returns from a pooled vehicle," and that prior Commission staff letters have previously recognized that capital contributions to a pool by the CPO's U.S. affiliate or the CPO's U.S. principals do not constitute "participation" in the pool that would otherwise require the protections of the Commission's CPO regulatory program in 17 CFR part 4.¹³⁶

Specifically, the Industry Groups noted that the proposed approach recognizes that affiliate contributions "reflect 'commercial' business decisions" to further the CPO's business goals and support the CPO's innovation and investment opportunities.¹³⁷ Both comment letters also recommended that, in finalizing the 2020 Proposal, the Commission adopt certain modifications that would generally expand the proposed availability of the Affiliate Contribution Exception.¹³⁸ The Commission will now explain the proposed conditions, responsive comments, and finally, the approach it is taking in the Final Rule, including the Commission's analysis pursuant to CEA section 4(c).

1. U.S. "Controlling" Affiliates

In the 2020 Proposal, the Commission proposed to permit U.S. controlling affiliates to contribute initial capital to offshore pools operated by their affiliated non-U.S. CPOs, because it preliminarily believed that the control typically exercised by a U.S. controlling affiliate over its non-U.S. CPO affiliate should provide a meaningful degree of protection and transparency with respect to the U.S. controlling affiliate's contribution of initial capital to a non-U.S. CPO's offshore commodity pool.¹³⁹ For purposes of determining what constitutes a "controlling affiliate," as that term was used in the 2020 Proposal,¹⁴⁰ the Commission used the definition of "affiliate" set forth in Commission regulation 4.7(a)(1)(i), which defines an "affiliate" as a person that directly or indirectly through one or more persons, controls, is controlled by, or is under common control with the specified person,¹⁴¹ and the definition of "control" as set forth in Commission regulation 49.2(a)(4), which defines "control" as the possession, direct or indirect, of the power to direct or cause the direction of the management and

¹²⁹ *Id.* at 35825.

¹³⁰ *Id.* (explaining that this definition of "control" stems from Commission regulation 49.2(a)(4) and was recently incorporated into the Commission's approach in the cross-border regulation of SDs); *Id.* at 35832 (proposing Commission regulation 3.10(c)(3)(iii)).

¹³¹ 2020 Proposal, 85 FR at 35825, 35831–35832.

¹³² Vanguard, at 2. The two changes urged by Vanguard are discussed in more detail below.

¹³⁶ Industry Group Letter, at 5.

¹³⁷ Industry Group Letter, at 5.

¹³⁸ Industry Group Letter, at 2–3; Vanguard, at 2.

¹³⁹ 2020 Proposal, 85 FR at 35825.

¹⁴⁰ The proposed Affiliate Contribution Exception referred to the qualifying contributing affiliate as "the control affiliate." *See, e.g.*, 2020 Proposal, 85 FR at 35832.

¹⁴¹ 17 CFR 4.7(a)(1)(i).

¹²⁹ 7 U.S.C. 6(d).

¹³⁰ *See infra* new Commission regulation 3.10(c)(5)(iii).

¹³¹ 2020 Proposal, 85 FR at 35825–35826.

policies of a person, whether through the ownership of voting securities, by contract, or otherwise.¹⁴²

The Commission further noted that the majority of a registered CPO's compliance obligations focus on customer protection through a variety of disclosures regarding a person's participation in a pool, which information a controlling affiliate would likely already be in a position to obtain, independent of the Commission's regulations.¹⁴³ The Commission preliminarily believed that a controlling person would have the corporate or other legal authority to require the controlled non-U.S. CPO to provide information equivalent to that required by the Commission, such as detailed information about the non-U.S. CPO's finances, management, and operations, and more relevant to the proposed amendment, access to investment and performance information for the offshore pool.¹⁴⁴ Based on that understanding, the Commission preliminarily concluded that, due to the fundamentally different features of the relationship between a controlling affiliate and a non-U.S. CPO, as compared with that between an outside investor and that CPO, initial capital contributions by a U.S. controlling affiliate to an offshore pool operated by an affiliated non-U.S. CPO do not raise the same customer protection concerns as investments in those pools by unaffiliated persons located in the United States.¹⁴⁵

As noted above, both responsive comments supported the general concept of the proposed Affiliate Contribution Exception. Although the commenters agreed that employing the definition of "affiliate" from Commission regulation 4.7(a)(1)(i) for this purpose is appropriate, they both opposed the additional proposed condition of "control," as defined in Commission regulation 49.2(a)(4).¹⁴⁶ Vanguard recommended that the Commission not require that the U.S. affiliate contributing capital to an offshore pool managed by a non-U.S. CPO "be a controlling affiliate of the non-U.S. CPO or be regulated in the United States in order to qualify for" the

Affiliate Contribution Exception.¹⁴⁷ Likewise, the Industry Groups specifically recommended that the Affiliate Contribution Exception be applicable to offshore pool contributions by *all* affiliates, as defined in Commission regulation 4.7(a)(1)(i), rather than just controlling affiliates, and further stated their belief that limiting the exception to contributions from controlling affiliates serves no regulatory need for the Commission.¹⁴⁸

Additionally, the Industry Groups stated that the Commission's motivation in requiring such control, that the U.S. controlling affiliate would therefore have access to any and all information on the non-U.S. CPO and the offshore pool otherwise required for participants by virtue of 17 CFR part 4, was misplaced because, they argued, capital contributions to a pool by affiliates of its CPO "reflect commercial business decisions intended for the purpose of supporting the organization's business operations."¹⁴⁹ The Industry Groups emphasized, moreover, that limiting the Affiliate Contribution Exception to controlling affiliates is "neither necessary nor appropriate to ensure that global organizations can obtain the information they need for commercial decision-making."¹⁵⁰ They stated that requiring control in the Affiliate Contribution Exception "would in no way further the protection of U.S. investors," because affiliate contributions to an offshore pool are "not properly viewed as participant investments requiring Part 4 protection[s]."¹⁵¹ The Industry Groups also argued that the proposed condition would "prevent many global organizations from being able to rely on the exemption in circumstances that do not present any of the concerns" raised in the 2020 Proposal.¹⁵² Finally, the Industry Groups stated that "there is no basis for requiring the entity directly contributing capital to control the [non-U.S.] CPO," as long as all of the entities involved remain, "under [the] common

control of an entity responsible for the success of the enterprise."¹⁵³

After further consideration of the proposed Affiliate Contribution Exception and the comments received, the Commission does not believe that requiring the U.S. affiliate to "control" the non-U.S. CPO is necessary to address the Commission's stated policy concerns. The definition of "affiliate" in Commission regulation 4.7(a)(1)(i) already incorporates the idea of "control,"¹⁵⁴ which is substantively identical to that in Commission regulation 49.2(a)(4).¹⁵⁵ Therefore, as noted by commenters, control is already required between or among related entities for those entities to be considered "affiliates" under Commission regulation 4.7(a)(1)(i), as "control" is inherent to that "affiliate" definition.

Because control is a fundamental element of the relationship between a U.S. affiliate and non-U.S. CPO, and therefore is incorporated into the proposed Affiliate Contribution Exception due to its reference to Commission regulation 4.7(a)(1)(i), the Commission believes that including an additional reference to "control" from Commission regulation 49.2(a)(4) is redundant and unnecessary to ensure there is "a meaningful degree of protection and transparency," or adequate information and disclosure flowing between those entities. Upon consideration of the comments and the Commission's concerns delineated in the 2020 Proposal about sufficient information regarding an offshore pool investment being available to a contributing U.S. affiliate, the

¹⁴² *Id.* at 6.

¹⁴³ 17 CFR 4.7(a)(1)(i).

¹⁴⁴ When the Commission proposed the definition of "affiliate" in Commission regulation 4.7, which it later adopted without modification, it stated that the definition was identical to that in the Securities and Exchange Commission's (SEC's) Regulation D. Exemption for Commodity Pool Operators With Respect to Offerings to Qualified Eligible Participants; Exemption for Commodity Trading Advisors With Respect to Advising Qualified Eligible Clients, 65 FR 11253, 11256 (Mar. 2, 2000) (stating that the proposed definition is based upon the "affiliate" definition in Rule 501 of Regulation D under the Securities Act of 1933.); 17 CFR 230.501(b). The definition of "affiliate" in Regulation D is identical to that in SEC Rule 405 of Regulation C. Revision of Certain Exemptions From Registration for Transactions Involving Limited Offers or Sales, 47 FR 11251, 11255 (Mar. 16, 1982); 17 CFR 230.405. Rule 405 of Regulation C, in turn, defines "control" as used in the definition of "affiliate" in both Regulation D and—pertinent to this Final Rule—Commission regulation 4.7(a)(1)(i), as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. 17 CFR 203.405, *control*.

¹⁴⁷ Vanguard, at 2 (citing other 17 CFR part 4 regulations as provisions that "acknowledge that a CPO's affiliate that contributes capital to offshore pools does not need to receive the information that is otherwise provided by a CPO to other investors for their protection").

¹⁴⁸ Industry Group Letter, at 5–6 (stating that, "[a]s proposed, the [Affiliate Contribution Exception] would be available only to contributions by those entities in an organizational structure that are upstream of the CPO, and would exclude contributions from all other affiliates").

¹⁴⁹ *Id.* at 6.

¹⁵⁰ *Id.* (noting further that this proposed condition does not "accurately reflect the realities of enterprise decision-making and information flow").

¹⁵¹ Industry Group Letter, at 8.

¹⁵² *Id.* at 7–8.

¹⁴² 17 CFR 49.2(a)(4).

¹⁴³ 2020 Proposal, 85 FR at 35825, *citing* 17 CFR 4.22(c)(8) (providing that a registered CPO need not distribute an annual report to pools operated by persons controlling, controlled by, or under common control with the CPO, provided that information regarding the underlying pool is contained in the investor pool's annual financial statement).

¹⁴⁴ 2020 Proposal, 85 FR at 35825.

¹⁴⁵ *Id.*

¹⁴⁶ Vanguard, at 2; Industry Group Letter, at 5.

Commission believes that such U.S. affiliate does not have to control the non-U.S. CPO, as contemplated by the 2020 Proposal, for the Commission to be reasonably confident that the U.S. affiliate has a meaningful degree of visibility into the operations of the non-U.S. CPO and the offshore pool, absent the protections provided by part 4 of the Commission's regulations. Therefore, the Commission concludes in the Final Rule that it is not necessary for the U.S. affiliate to be a controlling affiliate, provided that "control," as articulated by the affiliate definition in Commission regulation 4.7(a)(1)(i), is present.¹⁵⁶

In arriving at this conclusion, the Commission reflected upon the nature and characteristics of the types of relationships generally included within the definition of "affiliate" under Commission regulation 4.7(a)(1)(i), as incorporated in both the 2020 Proposal and the Final Rule. As explained above, entities meet the definition of "affiliate" in Commission regulation 4.7(a)(1)(i) primarily by virtue of the control in their relationships to one another; this obviates the need for the Commission, through its regulations or otherwise, to mandate the provision of information to the contributing affiliate.

For instance, if the U.S. affiliate controls the non-U.S. CPO, as discussed in the 2020 Proposal, the U.S. affiliate would have the direct authority to obtain any information it needs related to its capital contribution to the offshore pool operated by its controlled non-U.S. CPO. Alternatively, if a U.S. affiliate is controlled by the non-U.S. CPO of an offshore pool, as a corporate subsidiary, in the Commission's experience, the U.S. affiliate typically has increased access to information about the operations of its parent, as compared to a third-party participant, because the controlled U.S. affiliate may obtain such information as needed, and otherwise has the ability to access internal information regarding its parent's operations, including information regarding an offshore pool. Moreover, where the U.S. affiliate and the non-U.S. CPO are under common control of a third entity, that third-party controlling affiliate, due to its interest in the

continued viability of the U.S. affiliate, the non-U.S. CPO, and the enterprise as a whole, would, in the Commission's experience, ensure that its controlled U.S. affiliate was in possession of any and all relevant information regarding the offshore pool necessary to assess the propriety of the U.S. affiliate contributing initial capital to that vehicle. In each instance, the U.S. affiliate, regardless of whether it is controlling, controlled by, or under common control with a non-U.S. CPO of an offshore pool, would have a mechanism to obtain information regarding the operations of that offshore pool, independent of the Commission's regulatory requirements under 17 CFR part 4. This conclusion is also consistent with the Commission's determination to exempt certain affiliated pool participants from the disclosure and reporting requirements in part 4 of its regulations, based on similar analyses of the nature of those contributions and of the relationships between such affiliated participants and the CPO.¹⁵⁷

Based on the foregoing, the Commission concludes that the general nature of such affiliate relationships assuages its stated concerns in the 2020 Proposal in the context of the Affiliate Contribution Exception. The Commission believes that where the U.S. affiliate contributing initial capital to the offshore pool controls, is controlled by, or is under common control with, the offshore pool's non-U.S. CPO, consistent with the "affiliate" definition in Commission regulation 4.7(a)(1)(i), this provides such U.S. affiliate with sufficient access to the information it needs about the non-U.S. CPO or the offshore pool to make properly informed decisions regarding any initial capital contributions to that offshore pool. Thus, the Commission concludes that such U.S. affiliate of a non-U.S. CPO contributing to its offshore pool should be eligible for the Affiliate Contribution Exception, provided the other conditions are met. The Final Rule therefore adopts the Affiliate Contribution Exception, without additionally requiring that the

U.S. affiliate control the affiliated non-U.S. CPO, and without reference to Commission regulation 49.2(a)(4).¹⁵⁸

2. The Timing of a U.S. Affiliate's Capital Contributions to an Offshore Pool

In the 2020 Proposal, the Commission also stated its preliminary intent to limit the Affiliate Contribution Exception to capital contributed by a U.S. controlling affiliate at or near the inception of a non-U.S. CPO's offshore pool.¹⁵⁹ The Commission explained that such initial capital contributions generally result from commercial decisions by the U.S. controlling affiliate, typically in conjunction and coordination with the non-U.S. CPO, to support the offshore pool until such time as it has an established performance history for solicitation purposes, notwithstanding that the affiliate's capital may remain invested for the life of the offshore pool.¹⁶⁰ Limiting the Affiliate Contribution Exception to initial capital contributions, the Commission preliminarily believed, is appropriate to ensure that the capital is being contributed in an effort to support the operations of the offshore pool at a time when its viability is being tested, rather than as a mechanism for the U.S. controlling affiliate to generate returns for its own investors.¹⁶¹

The Commission also discussed in the 2020 Proposal whether such contributions should be time-limited in any regard. The Commission acknowledged a staff letter issued by the Division of Swap Dealer and Intermediary Oversight (DSIO), wherein DSIO staff determined that a limitation on how long U.S. contributions could remain invested in an offshore pool without the non-U.S. CPO registering as such was appropriate, because some of the U.S. derived capital came from U.S. natural persons employed by the non-U.S. CPO's affiliated U.S. investment advisers.¹⁶² In the 2020 Proposal, the Commission preliminarily concluded that imposing a similar time limit on the proposed Affiliate Contribution Exception was not necessary, where the initial capital contributions are derived not from natural person employees, but rather from the corporate funds of the contributing affiliate.¹⁶³

¹⁵⁶ 2020 Proposal, 85 FR at 35825. The Commission notes that, in the 2020 Proposal, this discussion focused on the relationship between a "U.S. controlling affiliate" and the non-U.S. CPO because the Commission believed that, for purposes of the proposed Affiliate Contribution Exception, the control that a U.S. controlling affiliate is able to exercise with respect to the operations of the non-U.S. CPO and its offshore pools provides adequate assurances that the U.S. controlling affiliate is able to obtain and act upon the information relevant to its participation in the non-U.S. CPO's offshore pool. *Id.* at 35825–35826.

¹⁵⁷ See, e.g., 17 CFR 4.21(a)(2) (stating that, for purposes of distributing disclosure documents to prospective participants, a CPO is not required to distribute to a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of the offered pool); 17 CFR 4.22(c)(8) (providing that, for purposes of the Annual Report distribution requirement, the term "participant" does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with the pool operator of a pool in which the commodity pool is invested).

¹⁵⁸ See *infra* new Commission regulation 3.10(c)(5)(ii).

¹⁵⁹ 2020 Proposal, 85 FR at 35826.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 35825, citing CFTC Staff Letter 15–46 (May 8, 2015), available at <https://www.cftc.gov/csl/15-46/download>.

¹⁶³ 2020 Proposal, 85 FR at 35825.

In response, the Industry Groups commented that the Commission's rationale supporting the Affiliate Contribution Exception "applies equally to affiliate support provided at other points in a pool's life cycle, and that limiting the [exception] to 'initial' contributions would thus reduce the effectiveness of the exemption without serving any U.S. investor protection purpose."¹⁶⁴ Vanguard supported the Commission's belief that any contribution of capital by a U.S. affiliate should be done to support the operations of an offshore pool at a time when its viability is being tested.¹⁶⁵ However, Vanguard noted that limiting contributions to "at or near a pool's inception" would have the unintended consequence of "limiting [an] affiliate's ability to support its non-U.S. CPO," and accordingly, recommended that the Commission not limit the Affiliate Contribution Exception to initial capital contributions.¹⁶⁶

Additionally, the Industry Groups stated that there are "many situations in the life of an offshore pool, after the initial startup period, where it is beneficial, and may be essential, to the pool's viability and to its participants for the CPO or its affiliates to provide additional support for the pool."¹⁶⁷ The Industry Groups noted that there are matters beyond a CPO's control "such as shareholder redemption activity and market disruptions" that make it important for the offshore pool to have continued access to affiliate capital support.¹⁶⁸ Alternatively, the Industry Groups stated that they would not be opposed to the Commission including in the Affiliate Contribution Exception a specific "purpose" provision, to ensure it is used "properly" or in good faith; their suggested language would require that, "'contributions of the affiliate will be for the purpose of establishing, or providing ongoing support to, the [offshore] pool to attract or retain non-U.S. investors and will not be used as a mechanism for the U.S. affiliate to generate returns for its own investors.'" ¹⁶⁹

After considering the comments received, the Commission is limiting the Affiliate Contribution Exception to initial capital contributions to an

offshore pool by U.S. affiliates of the pool's non-U.S. CPO, as proposed. Specifically, commenters confirmed the Commission's preliminary belief that affiliates commonly support offshore pools by making capital contributions at or near the pool's inception to facilitate the establishment of performance history for solicitation purposes, although the affiliate's capital may remain invested as long as the offshore pool operates. The Commission was clear in the 2020 Proposal that it was comfortable excepting from regulation, via the proposed Affiliate Contribution Exception, those capital contributions from a non-U.S. CPO's U.S. affiliate to an offshore pool that are contributed "at or near a pool's inception" for the specific purposes of generating performance history resulting from innovative or new trading programs.¹⁷⁰ The Commission stated that, consistent with its authority under CEA section 4(c), the Commission intended the proposed Affiliate Contribution Exception to allow such non-U.S. CPOs to test novel trading programs or otherwise engage in proof of concept testing in the collective investment industry that might otherwise not be possible due to a lack of a performance history for the offshore pool.¹⁷¹

Conversely, commenters have recommended expanding the time frame for affiliate capital contributions to permit them at any point during an offshore pool's existence, such that affiliate contributions may be made for a variety of reasons, other than testing a novel trading strategy or establishing a performance history for solicitation purposes.¹⁷² Such circumstances would permit a U.S. affiliate to provide ongoing support to an offshore pool, either to facilitate the offshore pool's ongoing operations in times of distress, or to attract and retain participants later in the offshore pool's lifecycle, well beyond its inception. The Commission has concerns that expanding the time frame for the Affiliate Contribution Exception in this manner could result in a U.S. affiliate being used by its affiliated non-U.S. CPO to financially support an otherwise poorly performing or even failing offshore pool, which could, in turn, adversely affect the financial condition of (and potentially result in the failure of) the U.S. affiliate, and ultimately, cause harm to the U.S. financial system and investors.

Moreover, the Commission believes that it would be difficult to craft a regulatory provision that appropriately

expands the time frame and/or circumstances under which U.S. affiliates would be permitted to make capital contributions to an offshore pool, without rendering the Affiliate Contribution Exception overbroad or impermissibly vague. As noted above, commenters suggested rule text requiring that, "'contributions of the affiliate will be for the purpose of establishing, or providing ongoing support to, the [offshore] pool to attract or retain non-U.S. investors and will not be used as a mechanism for the U.S. affiliate to generate returns for its own investors.'" ¹⁷³ This suggested language, in the Commission's opinion, provides such minimal limitations on the circumstances under which a U.S. affiliate could contribute capital to an offshore pool (with the only prohibition being the outright evasive generation of profits for investors in the U.S. affiliate), as to render the limitation meaningless in practice. As noted above, the Commission intended the proposed Affiliate Contribution Exception to be available for specific purposes related to the start-up or inception of an offshore pool, and to generating performance history for its new trading program or strategy. The Commission finds that broadening the exception's purpose as suggested by commenters could result in undue risk from offshore pools flowing back onto U.S. shores, and thus, to U.S. investors. Therefore, the Commission declines to broaden the time frame, and is adopting the Affiliate Contribution Exception as proposed, with the limitation to initial capital contributions by U.S. affiliates.¹⁷⁴

The Industry Groups also suggested that the Commission consider clarifying that, for purposes of the 3.10 Exemption, including the Affiliate Contribution Exception, when the Commission or one of its regulations refers to a "pool," it should generally be construed as also referring to series, sub-funds, and/or segregated portfolios of business organizations that provide statutory ring-fencing of assets and liabilities for each series, sub-fund, or segregated portfolio.¹⁷⁵ The Commission notes that the 2020 Proposal did not

¹⁷³ *Id.*

¹⁷⁴ Any non-U.S. CPO contemplating accepting additional capital contributions for an offshore pool from one or more of its U.S. affiliates outside the period of initial capitalization would have to separately qualify for, rely upon, or claim other relief from registration as a CPO with the Commission. Any such investment would not be eligible for this Affiliate Contribution Exception.

¹⁷⁵ Industry Group Letter, at 11, n. 25 (noting that, despite the different terminology between domestic series trusts and "segregated portfolios," the latter is an analogous corporate structure frequently used in jurisdictions outside of the United States).

¹⁶⁴ Industry Group Letter, at 8.

¹⁶⁵ Vanguard, at 3.

¹⁶⁶ *Id.*

¹⁶⁷ Industry Group Letter, at 8–9 (describing regulatory and business reasons, such as limits on owner concentration, investment diversification, internal guidelines, ensuring qualified purchaser status, or seeding a new share class for an existing offshore pool).

¹⁶⁸ Industry Group Letter, at 9.

¹⁶⁹ *Id.*

¹⁷⁰ 2020 Proposal, 85 FR at 35826.

¹⁷¹ *Id.*

¹⁷² *See, e.g.,* Industry Group Letter, at 8–9.

address the treatment of series, sub-funds, and/or segregated portfolios of structures that provide limited liability amongst such subdivisions. Furthermore, the Commission notes that, to date, it has not revised the definition of the term “pool” in Commission regulation 4.10(d) to recognize such subdivisions as individual pools, nor did the Commission propose such amendment in the 2020 Proposal.¹⁷⁶ Finally, given that the term “pool” is used throughout the Commission’s regulations, the Commission believes that it would be more appropriate to address the issue of how a pool may be organized more globally within its regulations, which it is unable to accomplish through this Final Rule.¹⁷⁷ Therefore, the Commission is not adopting a definition of “pool” for purposes of the 3.10 Exemption.

3. Additional Anti-Evasion Conditions: The Marketing Prohibition and Prohibiting “Bad Actor” U.S. Affiliates

The Commission acknowledged in the 2020 Proposal that the proposed Affiliate Contribution Exception could result in evasion of the Commission’s regulations generally with respect to offshore pools.¹⁷⁸ As an example, the Commission described a situation where a U.S. controlling affiliate could invest in its affiliated non-U.S. CPO’s offshore commodity pool, and then solicit persons located in the United States for investment in the U.S. controlling affiliate, in an effort to provide such U.S. investors with indirect exposure to the offshore pool.¹⁷⁹ The Commission then stated its preliminary belief that, under those circumstances, the Commission would consider such practices as constituting evasion of the Commission’s CPO regulations, and would thus render the non-U.S. CPO ineligible for the 3.10 Exemption.¹⁸⁰ The Commission therefore proposed an “anti-evasion” requirement in the Affiliate Contribution Exception that, interests in the U.S. controlling affiliate are not marketed as providing access to trading in commodity interest markets

in the United States, its territories or possessions.¹⁸¹

In the 2020 Proposal, the Commission further stated its preliminary belief that U.S. controlling affiliates who are barred from participating in the U.S. commodity interest markets should not be permitted to utilize the Affiliate Contribution Exception as a method to gain indirect access to those markets via an affiliated non-U.S. CPO’s offshore pool, which would undermine the efficacy of such a bar.¹⁸² Therefore, the Commission also proposed to limit the Affiliate Control Exception to U.S. controlling affiliates, which themselves and their principals are not subject to a statutory disqualification, ongoing registration suspension or bar, prohibition on acting as a principal, or trading ban with respect to participating in commodity interest markets in the United States, its territories or possessions.¹⁸³

Regarding the Commission’s concerns about the Affiliate Contribution Exception being used to evade other of the Commission’s part 4 regulatory protections, the Industry Groups concluded that the “anti-evasion condition of the [2020] Proposal,” prohibiting the marketing of interests in the U.S. affiliate as providing access to trading in U.S. commodity interest markets, addresses this concern and “is well-tailored to achieve its purpose.”¹⁸⁴ The Industry Groups did suggest, however, that the Commission could also “specify in the rule text, or in the final adopting release, that only affiliated entities, and not natural person affiliates, are contemplated by the [Affiliate Contribution Exception].”¹⁸⁵ The Commission agrees that it would further its intention of limiting the Affiliate Contribution Exception to juridical persons, rather than natural persons, as stated in the 2020 Proposal, to specifically limit the availability of that provision to entities, and not natural persons, in the regulatory text. As discussed in the 2020 Proposal, the Commission declined to propose a limit on the time in which capital contributions from U.S. affiliates can remain in the offshore pool because

it was envisioning such contributions deriving from entity affiliates rather than natural persons.¹⁸⁶ For the reasons stated in the 2020 Proposal, the Commission is therefore adopting, as proposed, but with the additional limitation suggested by commenters, the “anti-evasion” requirement designed to prohibit evasive conduct, in which U.S. participant capital could be solicited for investment in the U.S. affiliate, providing indirect exposure to the offshore pool.¹⁸⁷

With respect to the proposed condition prohibiting those U.S. controlling affiliates that are subject to a statutory disqualification, ongoing registration suspension or bar, prohibition on acting as a principal, or trading ban with respect to participating in commodity interest markets in the United States from relying on the Affiliate Contribution Exception, the Industry Groups stated that the proposed condition goes far beyond its purpose as stated by the Commission.¹⁸⁸ The Industry Groups explained that the “regulatory purpose is to keep out affiliates that are barred from participating in the U.S. commodity interest markets,” but the proposed condition “applies to the vague and far broader universe of persons that are ‘subject to a statutory disqualification.’”¹⁸⁹ Consequently, the Industry Groups recommended that the Commission remove any reference to statutory disqualification in this provision, for the purpose of eliminating confusion, and that the Commission focus this condition on prohibiting “entities that are in fact barred from participating in the U.S. commodity interest markets,” from utilizing the Affiliate Contribution Exception.¹⁹⁰

The Commission agrees that including statutory disqualifications in this provision does not further its goal of mitigating the risk that persons no longer permitted to participate in the U.S. commodity interest markets directly use the Affiliate Contribution Exception to access such markets through indirect means. The Commission notes that the issue of statutory disqualifications is related to registration with the Commission and generally concerns judgments regarding fitness to intermediate transactions on behalf of third parties.¹⁹¹ Those concerns are not present in the context

¹⁷⁶ 17 CFR 4.10(d)(1) (defining “pool” as any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests).

¹⁷⁷ See Administrative Procedure Act, Public Law 404, 60 Stat. 237, ch. 324, sections 1–12 (1946) (APA); codified by Public Law 89–554 (1966) at 5 U.S.C. 551–559, 701–706, 1305, 3105, 3344, 5372, 7521 (2011). Specifically, see APA, 5 U.S.C. 553(b).

¹⁷⁸ 2020 Proposal, 85 FR at 35826.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 35832 (proposing Commission regulation 3.10(c)(3)(iii)(B)). If interests in a U.S. entity including an affiliate of a CPO are marketed to U.S. persons as providing access to trading in commodity interest markets *outside* the United States, its territories or possessions, then that entity may be required to register with the Commission pursuant to Commission regulation 30.4(c). 17 CFR 30.4(c).

¹⁸² 2020 Proposal, 85 FR at 35826.

¹⁸³ *Id.* at 35832 (proposing Commission regulation 3.10(c)(3)(iii)(A)).

¹⁸⁴ Industry Group Letter, at 7.

¹⁸⁵ *Id.*

¹⁸⁶ 2020 Proposal, 85 FR at 35825.

¹⁸⁷ See *infra* new Commission regulation 3.10(c)(5)(ii)(C).

¹⁸⁸ Industry Group Letter, at 10.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ See 7 U.S.C. 12a(2) and 12a(3).

of the Affiliate Contribution Exception, where the Commission is more focused on foreclosing a potential loophole that could permit persons that are barred or prohibited from trading in the U.S. commodity interest markets to do so indirectly via offshore pool investments. Therefore, in response to commenters and to more clearly tailor this provision to the rationale the Commission articulated in the 2020 Proposal, the Commission is adopting the Affiliate Contribution Exception with the condition that the affiliate and its principals are not barred or suspended from participating in commodity interest markets in the United States, its territories or possessions.¹⁹²

4. Analysis Under Section 4(c) of the Act

Consistent with its authority under section 4(c) of the Act, the Commission concludes that providing the Affiliate Contribution Exception, subject to the conditions included in the Final Rule as detailed above, could result in increased economic or financial innovation by non-U.S. CPOs and their offshore pools participating in the U.S. commodity interest markets. The persons involved in the transactions subject to the exemptive relief provided herein are “appropriate persons,” as discussed in the 2020 Proposal, because the term “appropriate person” as used in CEA section 4(c) includes a commodity pool formed or operated by a person subject to regulation under the Act.¹⁹³ The Commission has previously interpreted the clause “subject to regulation under the Act” as including persons who are exempt from registration or excluded from the definition of a registration category.¹⁹⁴ The Commission continues to believe that enabling U.S. affiliates to provide initial capital to offshore pools operated by affiliated non-U.S. CPOs could provide such non-U.S. CPOs with the ability to test novel trading programs, or otherwise engage in proof of concept testing with respect to innovations in the collective investment industry that might otherwise not be possible, due to a lack of a performance history for the offered pool.

Additionally, the adoption of the Affiliate Contribution Exception will not have a material adverse effect on the

ability of the Commission to discharge its regulatory duties under the CEA. The U.S. affiliates contributing initial capital to offshore pools operated by their affiliated non-U.S. CPO will typically have access to the information and disclosures necessary for such U.S. affiliate to independently evaluate the propriety of its contribution to a specific offshore pool, absent the protections typically provided by part 4 of the Commission’s regulations. Based on its analysis above, the Commission concludes that the contributions subject to the Affiliate Contribution Exception are distinguishable from offshore pool contributions sourced from the general public in the United States that otherwise make such offshore pool ineligible for the 3.10 Exemption. Also, pursuant to CEA section 4(d), the Commission expressly retains the statutory authority to conduct investigations in order to determine compliance with the requirements or conditions of such exemption, or to take enforcement action for any violation of any provision of the CEA or any rule, regulation, or order thereunder caused by the failure to comply with or satisfy such conditions or requirements, notwithstanding this amendment.¹⁹⁵ Further, the Commission retains the authority to take enforcement action against any non-U.S. CPO claiming the 3.10 Exemption based on its activities within the U.S. commodity interest markets, and nothing in the Final Rule, including the adoption of the Affiliate Contribution Exception, negatively affects or restricts the Commission’s statutory and regulatory authority applicable to the commodity pool and intermediary activities of a non-U.S. CPO involving persons located in the United States. For the reasons stated in the 2020 Proposal and the analysis provided in this Final Rule, the Commission concludes that it is appropriate to provide the Affiliate Contribution Exception from the U.S. participant prohibition in the 3.10 Exemption, pursuant to section 4(c) of the Act.

G. Additional Relief for Commodity Trading Advisors

The Industry Groups recommended that the Commission adopt relief for non-U.S. CTAs, substantially similar to that proposed for non-U.S. CPOs in the 2020 Proposal, because, they argued, “[t]he regulatory goals in the 2020 Release apply equally to CTAs.”¹⁹⁶ Specifically, the Industry Groups requested that the Commission amend

Commission regulation 3.10(c) to “permit non-U.S. CTAs to claim the relief under Commission regulation 3.10(c) on an account-by-account basis . . . and [to] simultaneously rely on registration or other exemptions or exclusions for CTA activities on behalf of U.S. investors, in the same manner as the proposed amendments provide for CPOs.”¹⁹⁷ They argued that this amendment would also make it clear that a non-U.S. CTA providing advice to an offshore pool operated pursuant to the 3.10 Exemption would be eligible for relief from registration with the Commission.¹⁹⁸ In support of their arguments, the Industry Groups cited multiple instances of the Commission and its staff historically permitting the “stacking” of statutory and regulatory exemptions with registration for CTAs, and stated that “the Commission’s focus on [commodity trading] advice to U.S. investors [is] well established in the Commission’s regulatory framework.”¹⁹⁹

Despite these comments, the Commission is not adopting the suggested amendments to Commission regulation 3.10(c) regarding the activities of non-U.S. CTAs. The 2020 Proposal, which dealt primarily with amendments impacting the operations of CPOs, did not contemplate or discuss any such comparable modifications to Commission regulation 3.10(c) with respect to the activities of non-U.S. CTAs on behalf of foreign located persons.²⁰⁰ The 2020 Proposal also did not query whether the amendments impacting non-U.S. CPOs and their offshore pools should likewise be extended to include any of the activities of non-U.S. CTAs; nor did it address or consider the regulatory impact, positive or negative, such policy choices could have on the Commission’s regulatory program for CTAs. Under these circumstances, the Commission does not believe that the public would have had sufficient notice regarding the issue of adopting parallel provisions for non-U.S. CTAs, such that the public could provide meaningful comment as required by the Administrative Procedure Act.²⁰¹ Therefore, the

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 13–14.

²⁰⁰ The Commission is adopting as final herein other amendments to Commission regulation 3.10(c) applicable to non-U.S. CTAs consistent with the 2016 Proposal. The Commission notes that those amendments broadly applied to non-U.S. IBs, non-U.S. CPOs, and non-U.S. CTAs, and did not impact or alter the specific conditions of eligibility for non-U.S. CTAs relying on the exemptive relief in that regulation.

²⁰¹ APA, 5 U.S.C. 553(b)–(c). The Commission notes that it does not disagree with the Industry

¹⁹² See *infra* new Commission regulation 3.10(c)(5)(ii)(B).

¹⁹³ 7 U.S.C. 6(c)(3)(E).

¹⁹⁴ 77 FR at 30655 (finding, in the context of the eligible contract participant definition, that construing the phrase “formed and operated by a person subject to regulation under the [CEA]” to refer to a person excluded from the CPO definition, registered as a CPO or properly exempt from CPO registration appropriately reflects Congressional intent).

¹⁹⁵ 7 U.S.C. 6(d).

¹⁹⁶ Industry Group Letter, at 13.

Commission declines to amend revised Commission regulation 3.10(c)(4) in a manner that would substantively alter or change the relief currently provided by that regulation to qualifying non-U.S. CTAs.

H. Reorganization of Commission Regulation 3.10(c)

As recognized by certain commenters, and as mentioned above, adopting the Final Rule as proposed in both the 2020 Proposal and the 2016 Proposal requires modification of the rule text as presented in each proposal. Thus, the Final Rule reorganizes that provision to accommodate the adopted changes and to increase the regulation's overall readability and clarity. Other than the changes specifically explained in this adopting release, this reorganization is not intended to make substantive changes to the regulatory obligations of any affected market participant.

Commission regulation 3.10(c), as adopted in the Final Rule, is reorganized. New paragraph 3.10(c)(1) now provides certain definitions of terms that are used throughout the remainder of paragraph (c), including: "covered transaction," defined to mean a commodity interest²⁰² transaction executed bilaterally or made on or subject to the rules of any DCM or registered SEF; "foreign located person," defined to mean a person located outside the United States, its territories, or possessions; and "international financial institution," the definition of which is discussed above in section II.B.3. The remainder of paragraph (c) is organized so that its enumerated sub-paragraphs refer to registration exemptions available to each type of intermediary. Thus, new paragraph 3.10(c)(2) sets forth exemptions applicable to market participants engaged in the activities of an FCM; new paragraph 3.10(c)(3) sets forth exemptions applicable to those persons engaged in the activities of an IB; new paragraph 3.10(c)(4) refers to an exemption for CTAs; and new paragraph 3.10(c)(5) provides an exemption for CPOs, and contains the conditions thereto and related provisions discussed

Groups' characterization of the Commission's or its staff's past positions with respect to the "stacking" of statutory and/or regulatory exemptions from CTA registration, or their combination with registration as such, being permissible. The Commission is, however, declining to adopt in revised Commission regulation 3.10(c)(4) relief for non-U.S. CTAs, comparable to that adopted herein for non-U.S. CPOs, without a prior published rulemaking proposal raising, addressing, and soliciting public comment on that specific policy question.

²⁰² "Commodity interest" is defined in Commission regulation 1.3. 17 CFR 1.3, *commodity interest*.

above. Finally, new paragraph 3.10(c)(6) contains the rule text previously presented in Commission regulation 3.10(c)(5).

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies, when promulgating regulations, to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities. If the rules are determined to have a significant economic impact, such agencies must provide a regulatory flexibility analysis regarding such economic impact. Each Federal agency is required to conduct an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking.²⁰³

The Final Rule adopted by the Commission today would affect FCMs, IBs, CTAs, and CPOs. The Commission has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the requirements of the RFA.²⁰⁴ The Commission has previously determined that FCMs are not small entities for purposes of the RFA. Therefore, the RFA does not apply to FCMs.²⁰⁵

With respect to CPOs, the Commission previously has determined that a CPO is a small entity for purposes of the RFA, if it meets the criteria for an exemption from registration under Commission regulation 4.13(a)(2).²⁰⁶ With respect to small CPOs operating pursuant to Commission regulation 4.13(a)(2), the Commission has concluded that, should the amendments to the 3.10 Exemption be adopted as final, certain of those small CPOs may choose to operate additional pools outside the United States, which could provide additional opportunities to develop their operations not currently available to them.²⁰⁷ The Commission notes, however, that such small CPOs

would remain subject to the total limitations on aggregate gross capital contributions and pool participants set forth in Commission regulation 4.13(a)(2) because that exemption is based on the entirety of the CPO's pool operations. Because investment vehicles operated under the 3.10 Exemption remain commodity pools under the CEA, the Commission does not believe that the Final Rule will result in a significant economic impact on a substantial number of small CPOs. Further, the Commission notes that the Final Rule would impose no new obligation, significant or otherwise, on any affected small CPO. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Final Rule will not have a significant impact on a substantial number of small entities with respect to CPOs.

With respect to CTAs and IBs, the Commission has found it appropriate to consider whether such registrants should be deemed small entities for purposes of the RFA on a case-by-case basis, in the context of the particular Commission regulation at issue.²⁰⁸ As certain of these registrants may be small entities for purposes of the RFA, the Commission considered whether these amendments would have a significant economic impact on such registrants.²⁰⁹ By combining amendments from the 2016 and 2020 Proposals, the Final Rule will clarify in what circumstances certain foreign located persons acting in the capacity of an IB or CTA are exempt from registration under Commission regulation 3.10(c), in connection with commodity interest transactions solely on behalf of other foreign located persons. The Final Rule thus would not impose any new burdens on these market participants. Rather, to the extent that the Final Rule provides an exemption from generally required intermediary registration, the Commission believes it is reasonable to infer that operating pursuant to the exemption, as amended by the Final Rule, will be less burdensome to such participants. The Commission does not, therefore, expect IBs or CTAs that are small entities to incur any additional costs as a result of the Final Rule amendments. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Final Rule will not have

²⁰³ 5 U.S.C. 601, *et seq.*

²⁰⁴ See, e.g., Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18620 (Apr. 30, 1982).

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 18619–20. Commission regulation 4.13(a)(2) exempts a person from registration as a CPO when: (1) None of the pools operated by that person has more than 15 participants at any time, and (2) when excluding certain sources of funding, the total gross capital contributions the person receives for units of participation in all of the pools it operates or intends to operate do not, in the aggregate, exceed \$400,000. 17 CFR 4.13(a)(2).

²⁰⁷ 2020 Proposal, 85 FR at 35827.

²⁰⁸ See 47 FR at 18620 (CTAs); and Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements, 48 FR 35248, 35276 (Aug. 3, 1983) (IBs).

²⁰⁹ 2016 Proposal, 81 FR at 51826.

a significant impact on a substantial number of small entities with respect to IBs and CTAs.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA.²¹⁰ An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. In the 2020 Proposal, the Commission preliminarily determined that the proposed amendments, if adopted, would not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget (OMB) under the PRA.²¹¹

The Commission invited the public and other interested parties to comment on any aspect of the information collection requirements discussed in the 2020 Proposal.²¹² The Commission did not receive any such comments. The Commission similarly invited the public and other interested parties to comment on any aspect of the reporting burdens under the 2016 Proposal,²¹³ but also did not receive any such comments. Therefore, the Commission concludes that the Final Rule, by adopting amendments to Commission regulation 3.10(c) derived from both the 2016 Proposal and the 2020 Proposal, does not impose any new recordkeeping or information collection requirements, or other collections of information that require OMB approval under the PRA.

C. Cost-Benefit Considerations

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the CEA.²¹⁴ Section 15(a) of the Act further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of the futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any of the five

enumerated areas of concern, and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest, or to effectuate any of the provisions or to accomplish any of the purposes of the CEA. The Commission invited public comment on the cost-benefit considerations in both the 2016 and 2020 Proposals, but received no comments on those analyses.²¹⁵

As discussed above, pursuant to the 2016 Proposal, the Commission proposed to amend Commission regulations 3.10(c)(2) and (c)(3) to revise the conditions under which those exemptions from registration would apply. Specifically, the 2016 Proposal would permit a Foreign Intermediary to be eligible for an exemption from registration, if the Foreign Intermediary, in connection with a commodity interest transaction, only acts on behalf of (1) foreign located persons, or (2) IFIs, without regard to whether such persons or institutions clear such commodity interest transaction.²¹⁶ The Final Rule adopts the exemptions as proposed in the 2016 Proposal, but clarifies that commodity interest transactions effected by Foreign Intermediaries on behalf of foreign located persons that are required or intended to be cleared on a registered DCO, must be cleared through a registered FCM, unless the foreign located person is a clearing member of the DCO (and thus may clear for itself).²¹⁷

As described above, the Commission is adopting several amendments to Commission regulation 3.10(c). Specifically, the Commission is amending the 3.10 Exemption such that non-U.S. CPOs may rely on that relief on a pool-by-pool basis through new Commission regulation 3.10(c)(5)(i). Next, new Commission regulation 3.10(c)(5)(ii) contains the finalized Affiliate Contribution Exception, which makes it clear that a non-U.S. CPO's eligibility for the 3.10 Exemption is unaffected by initial capital contributions from a U.S. affiliate of the non-U.S. CPO to the non-U.S. CPO's offshore pools, provided certain conditions are met. The Commission is also adding new Commission regulation 3.10(c)(5)(iii), which establishes a conditional safe harbor permitting non-U.S. CPOs, who cannot represent with absolute certainty that there are no U.S. participants in their offshore pools, to nonetheless utilize the 3.10 Exemption

for those offshore pools. Finally, the Commission is adopting Commission regulation 3.10(c)(5)(iv), which explicitly permits a non-U.S. CPO utilizing the 3.10 Exemption for one or more offshore pools to register as a CPO, claim an available exemption from CPO registration, claim an exclusion from the CPO definition, or claim other available relief from CPO regulation, with respect to other pools it operates. These regulatory amendments adopted by the Final Rule grant non-U.S. CPOs relief that will likely generate costs and benefits. The baseline against which these costs and benefits are compared is the regulatory status quo set forth in current Commission regulation 3.10(c)(3).

The consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with some leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of this proposal on all activity subject to the proposed amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with activities in or effect on U.S. commerce under CEA section 2(i).²¹⁸

1. Costs and Benefits Related to Finalizing the 2016 Proposal

Pursuant to the Final Rule, the Commission has recognized that not all commodity interest transactions are required to be cleared.²¹⁹ This aspect of the Final Rule should provide the benefit of reducing inefficiencies in the commodity interest activities of foreign located persons by eliminating confusion over whether the relevant exemption from registration is dependent on clearing commodity interest transactions through a registered FCM. With respect to commodity interest transactions that are required or intended to be cleared by a registered DCO, the Final Rule should provide the benefit of increased market efficiency by clearly delineating that such transactions must be cleared

²¹⁰ 44 U.S.C. 3501, *et seq.*

²¹¹ 2020 Proposal, 85 FR at 35827.

²¹² *Id.*

²¹³ 2016 Proposal, 81 FR at 51827.

²¹⁴ 7 U.S.C. 19(a).

²¹⁵ 2016 Proposal, 81 FR at 51827; 2020 Proposal, 85 FR at 35827.

²¹⁶ 2016 Proposal, 81 FR at 51826.

²¹⁷ *See supra* pt. II.B.3.

²¹⁸ 7 U.S.C. 2(i).

²¹⁹ *See supra* pt. II.B.3.

through a registered FCM, unless the Foreign Intermediary's customer is a member of the DCO (and thus, may clear for itself). The Commission further believes that the legal certainty provided by this aspect of the Final Rule may increase participation in the U.S. commodity interest markets by foreign located persons, and thus, ensure greater depth in such markets accessed by U.S. persons. The Commission has not identified any additional costs attributable to this aspect of the Final Rule.

2. Commission Regulation 3.10(c)(5)(i): Claiming the 3.10 Exemption on a Pool-by-Pool Basis

Pursuant to the Final Rule, a non-U.S. CPO will be able to claim the 3.10 Exemption with respect to its qualifying offshore pools, while registering as a CPO or claiming another CPO exemption or exclusion for its other pools that do not qualify for the 3.10 Exemption because they are either domiciled in the U.S., or they solicit and/or accept as participants persons located within the United States. Absent this amendment, such non-U.S. CPOs face some costs and compliance burdens associated with the operation of their offshore pools,²²⁰ despite the Commission's historical focus on prioritizing customer protection with respect to persons located in the United States. For example, certain registered U.S. and non-U.S. CPOs file self-executing notices pursuant to Advisory 18-96 with respect to their offshore pools. The Advisory provides compliance relief with respect to all of the pool-based disclosures required under the Commission's regulations, as well as many of the reporting and recordkeeping obligations that otherwise would apply to registered CPOs, with the exception of the requirement to file Form CPO-PQR under Commission regulation 4.27.²²¹ The relief pursuant to Advisory 18-96 also allows qualifying, registered U.S. CPOs to maintain their offshore pool's original books and records at its offshore location, rather than at the CPO's main business office in the United States.²²²

Currently, based on the notices filed pursuant to Advisory 18-96, the Commission is aware of 23 non-U.S. CPOs that operate 84 offshore pools and 20 U.S. CPOs that operate 88 offshore pools. In total, 43 CPOs file Advisory 18-96 notices. However, the

Commission believes that there are likely a number of registered non-U.S. CPOs that do not list their offshore pools with the Commission, and therefore, do not claim relief under Advisory 18-96. Although these notices must be filed by hardcopy, the Commission believes the administrative costs are low.²²³ CPOs must employ at least one employee to manage and file the one-time notice under Advisory 18-96. For a notice under Advisory 18-96 to be effective, the CPO must provide, among other things, business-identifying and contact information; representations that the CPO and its principals are not statutorily disqualified; enumerated rules from which the CPO seeks relief; and contact information for person(s) who will maintain the offshore books and records.²²⁴

Pursuant to the Final Rule, the current 23 registered non-U.S. CPOs that file Advisory 18-96 notices will be able to delist their offshore pools and no longer file Advisory 18-96 notices claiming relief for the 84 offshore pools. Upon delisting such pools, those registered non-U.S. CPOs would no longer have to include their offshore pools in their Form CPO-PQR filings, which will result in a relatively substantial cost savings for those non-U.S. CPOs and their offshore pool operations. The 20 U.S. CPOs, however, currently claiming relief under Advisory 18-96 will continue to do so because they remain ineligible for the 3.10 Exemption, due to their location in the United States, and as such, are not directly impacted by the Final Rule.

Currently, any registered CPO may avoid the requirement to list its offshore pools with the Commission by establishing a separate, foreign-domiciled non-U.S. CPO for all of the operated offshore pools qualifying for the 3.10 Exemption. The Commission believes that the Final Rule will effectively eliminate this incentive to establish a separately organized CPO solely for the purpose of operating offshore pools that qualify for the 3.10 Exemption. The costs associated with establishing a non-U.S. CPO vary, depending on the operating size and structure of the registered CPO and its pools, and the jurisdiction where the non-U.S. CPO is formed. For instance, these incentives to establish additional

CPOs may be affected by the financial outlay required to establish foreign-domiciled CPOs given that set-up costs, e.g., costs to pay staff and experts; expenses for business licenses and registrations; costs to draft operational and disclosure documents; fees to establish technological services, would be expected to vary by jurisdiction. Therefore, although the Commission believes that there are costs associated with establishing a separate, foreign-domiciled non-U.S. CPO, the Commission finds that such costs may vary widely and are highly dependent on the organization and footprint of the registered CPO and its operated pools, as well as the relevant jurisdiction where the additional non-U.S. CPO would be formed.

The Commission believes, however, that permitting non-U.S. CPOs to claim the 3.10 Exemption on a pool-by-pool basis pursuant to the Final Rule will likely result in CPO complexes generally saving the costs associated with forming and maintaining separate CPOs to operate the other pools in its structure, thereby reducing unnecessary complexity in overall corporate structure and pool operations. Amending the 3.10 Exemption such that non-U.S. CPOs may claim the exemption on a pool-by-pool basis, the Commission believes, will eliminate a large portion of the compliance costs associated with CFTC-registered, non-U.S. CPOs' offshore pool operations, which, by their very characteristics, implicate fewer of the Commission's regulatory interests.²²⁵ The Commission notes that this reduction only relates to U.S. compliance costs, as the Final Rule has no impact on the costs non-U.S. CPOs incur related to foreign regulatory regimes. As mentioned above, the Commission concludes that targeting its CPO oversight in this manner appropriately recognizes the increasingly global nature of the asset management industry.

The Commission also does not anticipate that non-U.S. CPOs will experience any increased costs associated with claiming the 3.10 Exemption on a pool-by-pool basis. The 3.10 Exemption has never required a filing or notice to claim the relief it provides, and that remains true under the Final Rule. Prior to the Final Rule, the terms of the 3.10 Exemption required a non-U.S. CPO to continuously monitor the operations of its offshore pools to ensure that they are neither offered nor sold to any participants located in the United States. Under the terms of the Final

²²⁰ Such costs vary widely because certain registered CPOs may be eligible for significant compliance relief for their pools pursuant to Advisory 18-96.

²²¹ Advisory 18-96, at 1-2.

²²² *Id.*

²²³ *Exemptions Available to CPOs*, NFA, available at <https://www.nfa.futures.org/members/cpo/cpo-exemptions.html> (noting that, while CPOs must generally claim exemptions electronically through NFA's Exemption System, "[e]xemptions pursuant to CFTC Advisory No. 18-96 must be filed with NFA in hardcopy").

²²⁴ Advisory 18-96, at 1.

²²⁵ See *supra* IIC.

Rule, and with the exception of the safe harbor discussed below, the 3.10 Exemption will continue to require such non-U.S. CPOs to monitor their offshore pool operations to ensure compliance with the 3.10 Exemption, as amended by the Final Rule.

The Commission believes that the Final Rule may result in some loss of information available to the public, specifically regarding offshore pools operated by registered non-U.S. CPOs, because such offshore pools will no longer be required to be listed with the Commission. Consequently, the offshore pools' existence and identifying information will no longer be publicly disclosed on NFA's BASIC database, once the non-U.S. CPO claims the 3.10 Exemption for such offshore pools. The Commission concludes that this loss of information will likely have a minimal practical effect on the investing public because persons located within the United States are typically not permitted by non-U.S. CPOs to participate in offshore pools, consistent with the conditions of the 3.10 Exemption, as amended by the Final Rule.

3. Commission Regulation 3.10(c)(5)(iii): Providing a Safe Harbor for Non-U.S. CPOs Whose Offshore Pools May Have Inadvertent U.S. Participants

As explained previously, the Commission is adopting Commission regulation 3.10(c)(5)(iii), which establishes a safe harbor for those non-U.S. CPOs, who, due to the structure of their offshore pools, cannot represent with absolute certainty that there are no U.S. participants; the safe harbor requires that such non-U.S. CPOs take specifically enumerated actions to minimize the possibility that U.S. persons are participating in the offshore pool.²²⁶ Commission regulation 3.10(c)(5)(iii), as adopted, benefits non-U.S. CPOs by making the registration relief provided under the 3.10 Exemption more widely available and by recognizing the informational limitations inherent in certain pool structures. Therefore, the Commission believes that this safe harbor could result in more non-U.S. CPOs relying upon the 3.10 Exemption with respect to more offshore pools. At this time, the Commission lacks sufficient information to estimate or quantify the number of non-U.S. CPOs and offshore pools that may claim relief under Commission regulation 3.10(c)(5)(iii), because the Commission does not currently receive the information necessary to determine

which offshore pools currently listed with the Commission are offered and sold solely to offshore participants, and what subset of those pools may have participation units traded in the secondary market. Given, however, that exchange-traded commodity pools currently comprise less than 1% of the total number of pools listed with the Commission, the Commission believes, it is reasonable to estimate the number of offshore pools operated in a similar manner to be equally small.

The Commission believes that non-U.S. CPOs that would be eligible for registration relief under the safe harbor in Commission regulation 3.10(c)(5)(iii) will avail themselves of that relief. This could result in the Commission receiving less information regarding the operation of such offshore pools. As noted above, the Commission believes that the amount of information lost as a result of the deregistration of such non-U.S. CPOs and associated delisting of their eligible offshore pools would be minimal, due to the expected small number of qualifying non-U.S. CPOs and offshore pools, relative to the total population of registered CPOs and listed pools.

The Commission also anticipates that there may be some inadvertent U.S. participants in offshore pools, who would lose the customer protections afforded by part 4 of the Commission's regulations, should a non-U.S. CPO decide to delist its offshore pools and claim relief under the 3.10 Exemption in reliance on this safe harbor. The Commission believes that its enumerated conditions, however, should result in a small number of U.S. participants being impacted. Moreover, the Commission believes that such U.S. participants, to the extent that they are aware that they are participating in what is known to be an offshore pool through the purchase of units sold in an offshore secondary market, may not expect to benefit from the customer protection provisions in part 4 of the Commission's regulations, but would instead expect to rely upon the regulatory protections of the offshore pool's home jurisdiction.

4. Commission Regulation 3.10(c)(5)(iv): Utilizing the 3.10 Exemption Concurrent With Other Available Exclusions and Exemptions

As explained above, the Commission is also adding Commission regulation 3.10(c)(5)(iv), such that non-U.S. CPOs may rely upon the 3.10 Exemption concurrent with other exemptions and exclusions, or, alternatively, CPO registration. The Commission believes that Commission regulation 3.10(c)(5)(iv) therefore benefits non-U.S.

CPOs due to its consistent treatment of CPOs of pools that are operated in a substantively identical manner, regardless of where the CPO is based. The Commission also anticipates that this amendment will benefit the non-U.S. CPO industry generally by providing regulatory certainty with respect to the ability of all non-U.S. CPOs to simultaneously rely upon the 3.10 Exemption and other applicable exclusions and exemptions under the Commission's regulations. This amendment is consistent with other provisions of the Commission's CPO regulatory program, where the Commission explicitly permits CPOs to claim more than one type of exemption or exclusion, or to register with respect to the variety of commodity pools that they operate.²²⁷

The Commission further believes that by clarifying the permissibility of using Commission regulation 4.13 exemptions, for example, in conjunction with the 3.10 Exemption, non-U.S. CPOs may be more likely to claim the relief under Commission regulation 4.13 for their pools that limit their commodity interest exposure to a *de minimis* amount, rather than registering and listing those pools. The Commission concludes that clearly establishing the availability of other exemptions and exclusions, or alternatively, registration with respect to the operation of certain pools offered or sold to persons within the United States, will further enable the Commission to more efficiently deploy its resources in the oversight of CPOs and commodity pools that it has determined more fully implicate its regulatory concerns and interests under the CEA.

If more non-U.S. CPOs claim exemptions under Commission regulation 4.13(a)(3), for example, for some of their U.S. facing pools as a result of the 2020 Proposal, this could result in pools that were previously listed and associated with a CPO registration being delisted. Under these circumstances, the Commission would, as a result, no longer receive financial reporting with respect to those pools, including on Form CPO-PQR. Because these commodity pools would, in fact, already be operated consistent with an existing exemption or exclusion, and because the Commission has previously determined that pools operated in such a manner generally do not require a registered CPO, the Commission concludes that any resulting loss of insight into such pools and their CPOs is consistent with the Commission's

²²⁶ See *infra* new Commission regulation 3.10(c)(5)(iii)(A)–(F).

²²⁷ See, e.g., 17 CFR 4.13(e)(2) and 4.13(f).

overall regulatory policy, and therefore, will likely have minimal negative impact on the public.²²⁸

5. Commission Regulation 3.10(c)(5)(ii): The Affiliate Contribution Exception

The Commission is also adopting amendments permitting non-U.S. CPOs to rely upon the 3.10 Exemption for the operation of an offshore pool, even if an affiliate within the United States provides initial capital for the offshore pool, pursuant to the Affiliate Contribution Exception. Absent the relief provided by Commission regulation 3.10(c)(5)(ii), a non-U.S. CPO of an offshore pool receiving initial capital from an affiliate within the United States would generally be required to register as a CPO and list that pool with the Commission, unless another exemption or exclusion was available. As a registered CPO with respect to that offshore pool, the non-U.S. CPO would then be required to comply with the compliance obligations set forth in part 4 of the Commission's regulations.

As discussed previously, the Commission has concluded that participation in an offshore pool by a U.S. affiliate does not raise the same regulatory concerns as an investment in the same pool by an unaffiliated participant located within the United States.²²⁹ In addition to the reasons outlined above, the Commission believes that the Affiliate Contribution Exception will provide regulatory relief for a small number of currently-registered CPOs. As mentioned above, based on the number of claims filed under Advisory 18–96, there are 23 non-U.S. CPOs that operate 84 offshore commodity pools. The Commission is unaware, however, of whether any of the offshore pools operated by those non-U.S. CPOs actually received initial capital contributions from a U.S. affiliate, in part, because the Commission does not collect such information. Nevertheless, because of the small number of claims by non-U.S. CPOs under Advisory 18–96, the Commission believes that the number of these CPOs that would be eligible for relief under the Affiliate Contribution Exception would likely be less than the 23. The Commission believes that there may be an unknown number of registered non-U.S. CPOs that have

never listed their offshore pools with the Commission, and hence, did not seek relief under the Advisory. Therefore, the total number of non-U.S. CPOs utilizing this provision could also be higher. In addition, as a result of the Commission being unaware of the current number of offshore pools operated by a non-U.S. CPO receiving seed capital from a U.S. affiliate, it is unable to predict how many pools will utilize the Affiliate Contribution Exception in the future.

The Commission also believes that the Affiliate Contribution Exception will result in reduced costs for non-U.S. CPOs by removing initial capital investments by U.S. affiliates in offshore pools from the analysis for 3.10 Exemption eligibility, and by eliminating any registration and compliance costs for such pools. This amendment will, however, result in U.S. affiliates not being able to rely upon the protections provided by CPO registration and by part 4 of the Commission's regulations, with respect to their initial capital investments in an offshore pool operated by their affiliated non-U.S. CPO.²³⁰ The Commission believes that this loss will likely be mitigated by a U.S. affiliate's ability to obtain whatever information regarding the offshore pool a U.S. affiliate may deem material to its investment, by virtue of its relationship with the non-U.S. CPO as affiliated entities. Moreover, the Commission believes this approach is consistent with the Commission's focus on protecting U.S. investors participating in commodity pools.

In the event a non-U.S. CPO has listed one or more offshore pools with the Commission due to the fact that the offshore pool received initial capital contributions from a U.S. affiliate, and such non-U.S. CPO determines to delist the offshore pool in question and instead rely upon the 3.10 Exemption by virtue of the Affiliate Contribution Exception, the Commission will no longer receive financial reporting with respect to such offshore pool, including on Form CPO–PQR. Because the Commission has determined that initial capital contributions by a U.S. affiliate do not raise the same customer protection concerns as capital received from other unaffiliated U.S. participants, however, the Commission concludes that any loss of insight into such offshore pools and their non-U.S. CPOs resulting from the Affiliate

Contribution Exception is generally consistent with the Commission's overall regulatory policy concerning CPOs and commodity pools.

6. Section 15(a) Factors

a. Protection of Market Participants and the Public

The Commission believes that the Final Rule will not have a material negative effect on the protection of market participants and the public. The Commission will continue to receive identifying information from U.S. CPOs operating offshore pools and pools offered to U.S. investors. Regarding a non-U.S. CPO whose offshore pools receive initial capital contributions from an affiliate in the United States, the Commission believes that although those offshore pools may no longer be subject to part 4 of the Commission's regulations, such U.S. affiliates, by virtue of their relationship with the non-U.S. CPO, are generally not as dependent upon the customer protections provided by the Commission's regulations. The Commission comes to this conclusion on the basis of its detailed analysis above of "affiliate" relationships generally, finding that, where a U.S. affiliate is controlled by, controlling, or under common control with the non-U.S. CPO of an offshore pool, as set forth in Commission regulation 4.7(a)(1)(i), the U.S. affiliate typically has access to information and disclosures that allow it to make an informed decision regarding its initial capital contributions to that offshore pool, even in the absence of express regulatory requirements from the Commission. The Commission also anticipates that some U.S. participants in offshore pools operated pursuant to the adopted safe harbor may lose the customer protections afforded by part 4 of the Commission's regulations; however, the Commission believes that the number of impacted U.S. participants will be small, due to the specific criteria required for reliance upon the safe harbor and the small number of exchange-traded commodity pools, generally. With respect to those aspects of the Final Rule that are derived from the 2016 Proposal, the Commission believes that the Final Rule will foster the protection of market participants and the public by providing greater legal certainty with respect to the commodity interest activities of persons located outside the U.S.

²²⁸ The Commission notes that it retains special call authority with respect to those CPOs claiming an exemption from registration pursuant to Commission regulation 4.13, which enables the Commission to obtain additional information regarding the operation of commodity pools by such exempt CPOs. See 17 CFR 4.13(c)(iii).

²²⁹ See *supra* pt. II.F.

²³⁰ For example, a U.S. affiliate would not be able to rely upon the Commission's part 4 regulations to require its affiliated non-U.S. CPO to provide the affiliate with disclosures and reporting generally mandated by those rules.

b. Efficiency, Competitiveness and Financial Integrity of the Futures Markets

Section 15(a)(2)(B) of the CEA requires the Commission to evaluate the costs and benefits of a regulation in light of efficiency, competitiveness, and financial integrity considerations. The Commission believes that the Final Rule will benefit the efficiency, competitiveness and financial integrity of the futures markets because, among other things, the Final Rule will effectively eliminate the current incentive to establish a separately organized CPO solely for the purpose of operating offshore pools that qualify for the 3.10 Exemption. As discussed above, permitting non-U.S. CPOs to claim the 3.10 Exemption on a pool-by-pool basis pursuant to the Final Rule will likely result in CPO complexes generally saving the costs associated with forming and maintaining separate CPOs to operate the other pools in their structure, thereby reducing unnecessary complexity in overall corporate structure and pool operations. The Commission believes this reduction in the complexity of CPO operations, specifically with respect to offshore pool operations, will positively affect the general financial integrity of market participants, and as discussed further above, may lead to more pools operated by non-U.S. CPOs being offered to U.S. participants, increasing competition and depth in U.S. commodity interest markets.

Additionally, the Commission believes that the adoption of the Affiliate Contribution Exception, the safe harbor, as well as the amendments from the 2016 Proposal, by the Final Rule clarifies Commission regulation 3.10(c), including the 3.10 Exemption, making the provision overall easier to understand and apply, providing additional flexibility in light of the increasingly global nature of the asset management industry as a whole, and likely, increasing the number of non-U.S. CPOs and offshore pools able to participate in the U.S. commodity interest markets without additional requirements. For these reasons, the Commission believes the Final Rule will have a positive impact on the efficiency, competitiveness and financial integrity of the futures markets, as contemplated by CEA section 15(a)(2)(B).

c. Price Discovery

Section 15(a)(2)(C) of the CEA requires the Commission to evaluate the costs and benefits of a regulation in light of price discovery considerations. The Commission believes that the legal

certainty provided by the amendments to the registration exemptions in the Final Rule may increase participation in the U.S. commodity interest markets by foreign located persons, and thus, ensure greater depth in such markets accessed by persons in the U.S. Thus, the Commission believes that the Final Rule, in its totality, will result in deeper commodity interest markets in the United States, which facilitates the price discovery function thereof.

d. Sound Risk Management Practices

Section 15(a)(2)(D) of the CEA requires the Commission to evaluate a regulation in light of sound risk management practices. The Commission believes that the Final Rule, as specifically related to non-U.S. CPOs, will not have a significant impact on the practice of sound risk management because the manner in which various funds, operators, and advisors organize, register, or claim relief from such regulation has only a small influence on how market participants manage their risks overall. The Commission believes, however, that the Final Rule, through the legal certainty provided by the amendments to these registration exemptions may increase participation in the U.S. commodity interest markets by foreign located persons, and thus, ensure greater depth in such markets accessed by persons in the U.S. The greater depth in such markets in turn will facilitate sound risk management.

e. Other Public Interest Considerations

Section 15(a)(2)(E) of the CEA requires the Commission to evaluate the costs and benefits of a regulation in light of other public interest considerations. The Commission has not identified any other public interest considerations impacted by the Final Rule beyond those identified as part of its analysis supporting the Commission's exercise of its authority under section 4(c) of the Act.

D. Anti-Trust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under CEA section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.²³¹ The

Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requested comment on whether the 2016 and 2020 Proposals implicate any other specific public interest to be protected by the antitrust laws, and it received no comments addressing this issue.

The Commission has considered the Final Rule to determine whether its amendments are anticompetitive and has identified no anticompetitive effects. Because the Commission has determined the Final Rule amendments are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 3

Consumer protection, Definitions, Foreign futures, Foreign options, Registration requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 3 as follows:

PART 3—REGISTRATION

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

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23.

■ 2. In § 3.10, revise paragraph (c) to read as follows:

§ 3.10 Registration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, swap dealers, major swap participants, and leverage transaction merchants.

* * * * *

(c) *Exemption from registration for certain persons*—(1) *Definitions*. For purposes of this paragraph (c), the following terms shall have the meanings set forth below.

(i) *Covered transaction* means a commodity interest transaction, as defined in § 1.3 of this chapter, executed bilaterally or made on or subject to the rules of any designated contract market or registered swap execution facility.

(ii) *Foreign located person* means a person located outside the United States, its territories, or possessions.

(iii) *International financial institution* means the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations,

²³¹ 7 U.S.C. 19(b).

the European Stability Mechanism, the North American Development Bank, those institutions defined as “international financial institutions” in 22 U.S.C. 262r(c)(2), those institutions defined as “multilateral development banks” in Article 1(5(a)) of Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC Derivative Transactions, Central Counterparties and Trade Repositories, their agencies and pension plans, and any other similar international organizations, and their agencies and pension plans.

(2) *Exempt futures commission merchants*—(i) *Proprietary accounts*. A person trading solely for proprietary accounts, as defined in § 1.3 of this chapter, is not required to register as a futures commission merchant; *provided*, that such person remains subject to all other provisions of the Act and of the rules, regulations and orders thereunder.

(ii) *Foreign located persons*. (A) A foreign located person engaging in the activity of a futures commission merchant, as defined in § 1.3 of this chapter, in connection with any covered transaction only on behalf of foreign located persons or international financial institutions is not required to register in such capacity; *provided*, that if any such covered transaction is required or intended to be cleared on a registered derivatives clearing organization and the foreign located person or international financial institution that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(B) A foreign located person acting in accordance with paragraph (c)(2)(ii)(A) of this section is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any registered futures commission merchant or any person required to be so registered.

(3) *Exempt introducing brokers*—(i) *Foreign located persons*. (A) A foreign located person engaged in the activity of an introducing broker, as defined in § 1.3 of this chapter, in connection with any covered transaction only on behalf of foreign located persons or international financial institutions is not required to register in such capacity; *provided*, that if any such covered transaction is required or intended to be cleared on a registered derivatives clearing organization and the foreign located person or international financial

institution that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(B) A foreign located person acting in accordance with paragraph (c)(3)(i)(A) of this section is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any registered introducing broker or any person required to be so registered.

(ii) *Exempt foreign brokers*. (A) A foreign located person that is exempt from registration as a futures commission merchant in accordance with § 30.10 of this chapter is not required to register as an introducing broker in accordance with section 4d of the Act if:

(1) Such person is affiliated with a futures commission merchant registered in accordance with section 4d of the Act;

(2) Such person introduces, on a fully-disclosed basis in accordance with § 1.57 of this chapter, any institutional customer, as defined in § 1.3 of this chapter, to a registered futures commission merchant for the purpose of trading on a designated contract market;

(3) Such person’s affiliated futures commission merchant has filed with the National Futures Association (Attn: Vice President, Compliance) an acknowledgement that the affiliated futures commission merchant will be jointly and severally liable for any violations of the Act or the Commission’s regulations committed by such person in connection with those introducing activities, whether or not the affiliated futures commission merchant submits for clearing any trades resulting from those introducing activities; and

(4) Such person does not solicit any person located in the United States, its territories or possessions for trading on a designated contract market, nor does such person handle the customer funds of any person located in the United States, its territories or possessions for the purpose of trading on any designated contract market.

(B) For the purposes of this paragraph, a person shall be affiliated with a futures commission merchant if such a person owns 50 percent or more of the futures commission merchant, is owned 50 percent or more by the futures commission merchant, or is owned 50 percent or more by a third person that also owns 50 percent or more of the futures commission merchant.

(4) *Exempt commodity trading advisors*. (i) A foreign located person engaging in the activity of a commodity trading advisor, as defined in § 1.3 of this chapter, in connection with any covered transaction only on behalf of foreign located persons or international financial institutions is not required to register in such capacity; *provided*, that if any such covered transaction is required or intended to be cleared on a registered derivatives clearing organization and the foreign located person or international financial institution that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(ii) A foreign located person acting in accordance with paragraph (c)(4)(i) of this section remains subject to section 4o of the Act, but otherwise is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any registered commodity trading advisor or any person required to be so registered.

(5) *Exempt commodity pool operators*. (i) A foreign located person engaged in the activity of a commodity pool operator, as defined in § 1.3 of this chapter, in connection with any covered transaction is not required to register in such capacity, when such covered transactions are executed on behalf of a commodity pool, the participants of which are all foreign located persons or international financial institutions; *provided*, that if any such covered transaction is required or intended to be cleared on a registered derivatives clearing organization and the commodity pool that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(ii) With respect to paragraph (c)(5)(i) of this section, initial capital contributed to a commodity pool by an affiliate, as defined by § 4.7(a)(1)(i) of this chapter, of the pool’s commodity pool operator shall not be considered for purposes of determining whether such commodity pool operator is executing commodity interest transactions on behalf of a commodity pool, the participants of which are all foreign located persons; *provided*, that:

(A) The affiliate is not a natural person;

(B) The affiliate and its principals are not barred or suspended from participating in commodity interest markets in the United States, its territories or possessions; and

(C) Interests in the affiliate are not marketed as providing access to trading in commodity interest markets in the United States, its territories or possessions.

(iii) A commodity pool operated by a foreign located person shall be considered to be operated in accordance with the terms of paragraph (c)(5)(i) of this section, if:

(A) The commodity pool is organized and operated outside of the United States, its territories or possessions;

(B) The commodity pool's offering materials and any underwriting or distribution agreements include clear, written prohibitions on the commodity pool's offering to participants located in the United States and on U.S. ownership of the commodity pool's participation units;

(C) The commodity pool's constitutional documents and offering materials:

(1) are reasonably designed to preclude persons located in the United States from participating therein; and

(2) include mechanisms reasonably designed to enable its operator to exclude any persons located in the United States that attempt to participate in the offshore pool, notwithstanding those prohibitions;

(D) The commodity pool operator exclusively uses non-U.S. intermediaries for the distribution of participations in the commodity pool;

(E) The commodity pool operator uses reasonable investor due diligence methods at the time of sale to preclude persons located in the United States from participating in the commodity pool; and

(F) The commodity pool's participation units are directed and distributed to participants outside the United States, including by means of listing and trading such units on secondary markets organized and operated outside of the United States, and in which the commodity pool operator has reasonably determined participation by persons located in the United States is unlikely.

(iv) Utilizing the relief under paragraph (c)(5)(i) of this section for a qualifying commodity pool will not affect the ability of a person to register with the Commission as a commodity pool operator, or to qualify for, rely upon, or claim other relief from regulation as such by the Commission, with respect to the operation of commodity pools or trading vehicles not

otherwise eligible for the relief offered in this section.

(v) A person acting in accordance with paragraph (c)(5)(i) of this section remains subject to section 4o of the Act, but otherwise is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any person registered in such capacity, or any person required to be so registered.

(6) *Associated persons of swap dealers.* In determining whether a person is a swap dealer, the activities of a registered swap dealer with respect to which such person is an associated person shall not be considered.

* * * * *

Issued in Washington, DC, on October 22, 2020, by the Commission.

Christopher Kirkpatrick,
Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Exemption From Registration for Certain Foreign Intermediaries—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Heath P. Tarbert

When the Commission considered the proposal to amend the registration exemption for foreign commodity pool operators (CPOs),¹ I noted that, in his second inaugural address in 1893, President Grover Cleveland remarked “[u]nder our scheme of government the waste of public money is a crime against the citizen.”² The CFTC is a taxpayer-funded agency, and Congress expects us to deploy our resources to serve the needs of American taxpayers. That is why as Chairman and Chief Executive, I have sought to revisit our agency's regulations where there does not appear to be a clear connection to furthering

¹ Exemption From Registration for Certain Foreign Persons Acting as Commodity Pool Operators of Offshore Commodity Pools, 85 FR 35820 (June 12, 2020).

² Statement of Chairman Heath P. Tarbert in Support of Amending the Registration Exemption for Foreign CPOs (May 28, 2020), available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement052820b>. See Second Inaugural Address of Grover Cleveland (Mar. 4, 1893), reprinted in *American History Through Its Greatest Speeches: A Documentary History of the United States 278* (Courtney Smith, et al., eds. 2016).

the interests of the United States or our citizens.³

The CFTC's framework for regulating foreign commodity CPOs protects U.S. investors who put their money in commodity investment funds run from outside the United States. But, in some instances, the only benefit of CFTC regulation of offshore CPOs is to *foreign* investors. There is no statutory mandate for the CFTC to regulate pools never offered or sold to U.S. investors. To do so absent a compelling reason would be—in President Cleveland's words—a waste of public money.

Consequently, I am pleased to support today's final rule to amend the exemption for CPOs in regulation 3.10(c) (3.10 Exemption). The final rule eliminates the potential need for the CFTC to require the registration and oversight of non-U.S. CPOs whose pools have no U.S. investors. The final rule additionally exempts U.S.-based affiliates of pool sponsors who put seed money into offshore funds that have only foreign investors. In so doing, the final rule provides much-needed regulatory flexibility for non-U.S. CPOs operating offshore commodity pools, without compromising the CFTC's mission to protect U.S. investors.

Exemption for Foreign CPOs Sponsoring Funds Without U.S. Investors

The final rule amends the conditions under which a foreign CPO, in connection with commodity interest transactions on behalf of persons located outside the United States, will qualify for an exemption from CPO registration and regulation with respect to an offshore pool. Specifically, through amendments to our regulation 3.10(c), a non-U.S. CPO will be able to operate pools offered to U.S. persons as either a registered or exempt CPO, while simultaneously claiming the 3.10 Exemption with respect to its qualifying offshore commodity pools.⁴

Absent a compelling reason, the CFTC should be focused on U.S. markets and U.S. investors, and refrain from extending our reach outside the United States.⁵ The

³ See Statement of Chairman Heath P. Tarbert in Support of Amending the Registration Exemption for Foreign CPOs, *supra* note 2.

⁴ The final rule adds a safe harbor as new regulation 3.10(c)(3)(iv) for non-U.S. CPOs that have taken what the Commission preliminarily believes are reasonable steps designed to ensure that participation units in the operated offshore pool are not being offered or sold to persons located in the United States.

⁵ For example, section 2(i) of the Commodity Exchange Act provides that the swap provisions of Title VII of the Dodd-Frank Act shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of Title VII. In interpreting this provision, the Commission has taken the position that “[r]ather than exercising its authority with respect to swap activities outside the United States, the Commission will be guided by international comity principles and will focus its authority on potential significant risks to the U.S. financial system.” Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 FR 56924, 56928 (Sep. 14, 2020).

protection of non-U.S. customers of non-U.S. firms is best left to foreign regulators with the relevant jurisdiction and mandate.⁶ Therefore, I believe it is appropriate for the final rule to allow foreign CPOs to rely on the 3.10 Exemption for their foreign commodity pools when they have no U.S. investors. Where a foreign CPO does have U.S. investors, other exemptions or exclusions from registration might be available.

Unfortunately, under a strict construction of the current rule, if a foreign CPO has one fund with U.S. investors, then the foreign CPO must register *all* its funds or rely on some other exemption besides the 3.10 Exemption. This “all or nothing” reading of the rule has produced two competing consequences—neither of which makes for good regulatory policy. First, if the CPO chooses to register with respect to all its funds, the CFTC ends up regulating some foreign-based funds without any U.S. investors. Second, if the CPO refuses to register for any of its funds, then U.S. investors are effectively denied the liquidity and investment opportunities offered by foreign commodity pools.

In the last decade, statutory and regulatory developments have produced a growing mismatch between the Commission’s stated policy purposes underlying the 3.10 Exemption (that focus the CFTC’s resources on the protection of U.S. persons) and the strict construction of the 3.10 Exemption (that leads to its “all or nothing” application). To address this mismatch, the final rule amends the 3.10 Exemption to align the plain text of the exemption with our longstanding policy goal of regulating foreign CPOs only when they offer their funds to U.S. investors. In effect, the Commission’s walk finally conforms to our talk.⁷

Affiliate Investment Exemption

The final rule also permits U.S. affiliates of a non-U.S. CPO to contribute capital to that CPO’s offshore pools as part of the initial capitalization without rendering the non-U.S. CPO ineligible for the 3.10 Exemption. In other words, the final rule allows a U.S. affiliate of a foreign CPO to invest in the offshore fund without triggering registration requirements because of the nature of the relationship between the affiliate and the non-U.S. CPO.

It is hard to imagine how an entity that controls, is controlled by, or is under

⁶ The Commission also cited this policy position in the initial proposal for what ultimately became Commission regulation 3.10(c)(3)(i). See 72 FR 15637, 15638 (Apr. 2, 2007).

⁷ Apart from policy incoherence inside the CFTC, the mismatch has also caused confusion among CPOs and their investors. A number of foreign CPOs have not adopted the strict “all or nothing” reading of the 3.10 Exemption, but have instead quite sensibly latched on to the Commission’s stated policy behind the rule to conclude that a foreign CPO may rely on the current 3.10 Exemption for non-U.S. pools with only non-U.S. investors even if the foreign CPO operates other non-U.S. pools with U.S. investors. Given that the confusion largely stems from the Commission’s own doing, I would not support any enforcement action against foreign CPOs whose interpretation followed the spirit, if not the letter, of the 3.10 Exemption. Furthermore, today’s final rule conforms to their reading.

common control with, a given foreign CPO could lack a sufficient degree of transparency with respect to its own contribution of initial capital to an offshore commodity pool run by that very same foreign CPO. In short, a U.S. affiliate’s initial investment in its affiliated non-U.S. CPO’s offshore pool does not raise the same investor protection concerns as similar investments in the same pool by unaffiliated persons located in the United States. In many cases, moreover, the affiliate is itself regulated by other U.S. regulators—for instance, state insurance departments in the case of insurance companies that wish to deploy their own general account assets as they best see fit, in keeping with their separate regulatory regimes. Accordingly, I see no reason to deploy the limited, taxpayer-funded resources of the CFTC to protect U.S. affiliates of foreign CPOs who are far better positioned than us to safeguard their own interests.

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

I am pleased to support today’s final rule that expands an existing exemption from registration for foreign commodity pool operators (CPOs) trading on U.S. markets on behalf of foreign investors. Building on previously granted staff no-action relief, the final rule creates new possibilities for fund managers, appropriately focuses the Commission’s resources and customer protection activities upon domestic firms and U.S. customers, and provides for simplified compliance. For example, the final rule permits non-U.S. CPOs to claim the exemption on a pool-by-pool basis, which I believe is appropriate given that many large, foreign CPOs operate both U.S. and non-U.S. pools. The final rule also permits a foreign fund manager to satisfy the exemption’s requirement that its pool does not contain funds of U.S. customers by complying with certain safe harbors, such as fund documentation requirements. In doing so, the final rule recognizes that the manner in which fund interests are sold in the real world often makes it impossible for a fund manager to make a blanket attestation that there is no U.S. investment in a given commodity pool.

Finally, for the first time, the final rule would permit U.S. affiliates of foreign pools to contribute initial capital to those pools. Allowing U.S. affiliates to contribute seed money to offshore pools operated by their affiliated non-U.S. CPOs should facilitate innovation and fund development by enabling those offshore pools to establish a performance history for solicitation purposes.

Appendix 4—Statement of Commissioner Dan M. Berkovitz

I am voting for the final rule amending regulation 3.10(c) (“Final Rule”). Regulation 3.10(c) provides an exemption from registration to foreign persons who operate commodity pools (“CPOs”) located outside of the United States. The Final Rule makes pragmatic adjustments to certain conditions for claiming the exemption that will allow the Commission to focus its limited resources on protecting U.S. persons who participate in commodity pools, rather than on commodity

pools operated outside the U.S. in which non-U.S. persons participate.

A fundamental goal of the Commission’s registration and regulation of CPOs is the protection of U.S. customers.¹ The CFTC has long held that CPOs trading commodity interests in our markets are not required to register as CPOs if they are located offshore and only operate pools for non-U.S. persons.² In 2007, the Commission codified the exemption in regulation 3.10(c).

The Final Rule: (i) Exempts non-U.S. CPOs from registration and regulation with respect to individual commodity pools that do not solicit from U.S. persons or have U.S. investors;³ (ii) provides that this exemption for some pools may be used with other exemptions or exclusions; and (iii) provides a safe harbor to non-U.S. CPOs in the event that U.S. persons inadvertently become participants in the offshore pools, provided that a number of conditions are met to minimize that possibility. Lastly, the Final Rule permits U.S. affiliates of non-U.S. CPOs to contribute “initial capital” to exempt offshore pools without being treated as “participants” in the pools themselves if certain conditions are satisfied.

In my statement for the proposed amendments to regulation 3.10(c), I noted some concern that the U.S. affiliate provision might result in persons in the U.S. investing—either knowingly or unknowingly—in unregulated foreign commodity pools if they invested in the U.S. affiliates. The proposal included specific “anti-evasion” provisions that would prevent certain “bad actors” from using the exemption and prohibit the marketing of the U.S. affiliate as a vehicle for U.S. commodity interest investments.⁴ At my request, several questions regarding potential abuse of the U.S. affiliate provision were included in the proposed rule.

The letters commenting on the proposed rule generally expressed support. A joint letter from asset management industry associations addressed the questions in the proposal regarding the U.S. affiliate provision and provided rationales in support thereof. The letter explained that the initial capital investments from U.S. affiliates intended to help demonstrate fund performance or facilitate fund operations, for example, are not the types of investments that need the full array of customer protections provided for individual commodity pool investors.

¹ The regulation of CPOs also facilitates the Commission’s ability to oversee the derivative markets, manage systemic risks, and fulfill its mandate to ensure safe trading practices. See, e.g., Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 FR 11252, 11253, 11275 (Feb. 24, 2012), upheld by *Investment Company Institute v. CFTC*, 720 F.3d 370 (D.C. Cir. 2013).

² See CFTC Staff Interpretative Letter 76–21 (Aug. 15, 1976).

³ The CPO would need to register and comply with CFTC regulations with regard to any other commodity pools it operates that do solicit funds from U.S. persons.

⁴ As noted in section II.F.3 of the Final Rule, if the U.S. affiliate is marketed as providing access to commodity interests traded outside the United States, then the affiliate would be subject to the registration regime provided for such entities in part 30 of the Commission’s regulations.

Furthermore, comment letters explained how the conditions in the U.S. affiliate provision, coupled with the anti-evasion provisions (with some modifications), balance the flexibility needed by CPOs to make prudent capital allocation decisions with preventive measures reducing the likelihood of abuse. While it is possible that some less than forthright actors could attempt to use the regulation 3.10(c) exemption to skirt the CPO registration requirements when soliciting commodity interest investments from U.S. persons, the Final Rule has appropriate restrictions that will facilitate enforcement when necessary.

In conclusion, the Final Rule makes prudent, limited amendments that reduce the burdens on the Commission's limited resources while maintaining the necessary protections intended for U.S. commodity pool participants. I would like to thank the commenters for their contribution to improving the Final Rule and the CFTC staff for working with my office to address my concerns.

[FR Doc. 2020-23810 Filed 12-2-20; 4:15 pm]

BILLING CODE 6351-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination with valuation dates falling in 2021. This table is needed to compute the value of early retirement benefits and, thus, the total value of benefits under a plan.

DATES: This rule is effective January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202-229-3829. (TTY users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-229-3829.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under title IV. Guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with subpart B of part 4044. In addition, when PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b) of the asset allocation regulation, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by PBGC to reflect changes in the cost of living, etc.

Tables II-A, II-B, and II-C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the

early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I-20 with Table I-21 to provide an updated correlation, appropriate for calendar year 2021, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I-21 will be used to value benefits in plans with valuation dates during calendar year 2021.

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC's update of appendix D for calendar year 2021 is routine. If a plan has a valuation date in 2021, the plan administrator needs the updated table being promulgated in this rule to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, and that good cause exists for making the table set forth in this amendment effective less than 30 days after publication to allow the use of the proper table to estimate the value of plan benefits for plans with valuation dates in early 2021.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 and Executive Order 13771.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

- 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

- 2. Appendix D to part 4044 is amended by removing Table I-20 and adding in its place Table I-21 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I-21—SELECTION OF RETIREMENT RATE CATEGORY
[For valuation dates in 2021 ¹]

If participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low ² if monthly benefit at URA is less than—	Medium ³ if monthly benefit at URA is—		High ⁴ if monthly benefit at URA is greater than—
		From—	To—	
2022	686	686	2,896	2,896
2023	701	701	2,963	2,963
2024	718	718	3,031	3,031
2025	734	734	3,100	3,100
2026	751	751	3,172	3,172
2027	768	768	3,245	3,245
2028	786	786	3,319	3,319
2029	804	804	3,396	3,396
2030	822	822	3,474	3,474
2031 or later	841	841	3,554	3,554

¹ Applicable tables for valuation dates before 2021 are available on PBGC's website (www.pbgc.gov).

² Table II-A.

³ Table II-B.

⁴ Table II-C.

* * * * *

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs Pension Benefit Guaranty Corporation.

[FR Doc. 2020-26209 Filed 12-4-20; 8:45 am]

BILLING CODE 7709-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA-HQ-OPPT-2019-0650; FRL-10015-16]

RIN 2070-AB27

Significant New Use Rules on Certain Chemical Substances (20-2.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs). This action requires persons to notify EPA least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. This action further requires that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice (SNUN), and EPA has conducted a review of the notice, made an appropriate determination on the notice,

and has taken any risk management actions as are required as a result of that determination.

DATES: This rule is effective on February 5, 2021. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on December 21, 2020.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-4163; email address: wysong.william@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import

certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions. This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA, which would include the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2019-0650, is available at <https://www.regulations.gov> and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

Due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for chemical substances which were the subject of PMNs P-18-58, P-18-126, P-18-199, P-18-367, P-19-158, and P-19-164. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** of February 24, 2020 (85 FR 10364) (FRL-10004-90), EPA proposed SNURs for these chemical substances. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** document proposing the SNURs. The docket includes information considered by the Agency in developing the proposed and final rules, including the public comments received on the proposed rules that are described in Unit IV.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

C. Do the SNUR general provisions apply?

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the

exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

A. Determination Factors

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is designating those reasonably foreseen conditions of use as well as certain other circumstances of use as significant new uses.

B. Procedures for Significant New Uses Claimed as CBI

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E.

Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

Under these procedures a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.*, the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

IV. Public Comments

EPA received one anonymous public comment on the proposed rule that was not relevant or specific to any particular SNUR in the proposed rule. EPA is not responding to the comment and made no changes for the final rule based on the comment.

V. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed

SNUR, EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially useful information.
- CFR citation assigned in the regulatory text section of this final rule.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these SNURs and as further discussed in Unit IV. of the proposed rule, EPA identified certain other reasonably foreseen conditions of use in addition to those conditions of use intended by the submitter. EPA has preliminarily determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use. EPA is designating these conditions of use as well as certain other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take

the required regulatory action associated with the determination, before manufacture or processing of the significant new use of the chemical substance can occur.

- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at <https://www.epa.gov/tsca-inventory>.

VII. Applicability of the Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule were undergoing premanufacture review at the time of signature of the proposed rule and were not on the TSCA inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these SNURs EPA concluded at the time of signature of the proposed rule that the designated significant new uses were not ongoing.

EPA designated February 3, 2020 (the date of web posting of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who began commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under section 5 allowing manufacture or processing to proceed.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.*, generating test data) before submission of a SNUN. There is an exception: If a

person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed rule will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol election. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. of the proposed rule may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result

from the significant new use of the chemical substances.

IX. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E-PMN software is available electronically at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca>.

X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket for this rulemaking.

XI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action establishes SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to PRA, 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control

number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b), 5 U.S.C. 601 *et seq.*, I hereby certify that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a “significant new use”. Because these uses are “new,” based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018. Only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from \$16,000 to \$2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about \$10,116 for qualifying small firms. Therefore, the potential

economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have federalism implications because it is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action will not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes, significantly or uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address

environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

XII. Congressional Review Act

This action is subject to the CRA (5 U.S.C. 801 *et seq.*), and EPA will submit a rule report containing this rule and other required information to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 12, 2020.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2,

300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11453 through 721.11458 in numerical order under the undesignated center heading “Significant New Uses of Chemical Substances” to read as follows:

§ 9.1 OMB Approvals under the Paperwork Reduction Act.

					OMB control No.
40 CFR citation					
*	*	*	*	*	*
Significant New Uses of Chemical Substances					
721.11453	.....				2070–0012
721.11454	.....				2070–0012
721.11455	.....				2070–0012
721.11456	.....				2070–0012
721.11457	.....				2070–0012
721.11458	.....				2070–0012
*	*	*	*	*	*

PART 721— SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add §§ 721.11453 through 721.11458 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

					OMB control No.
Sec.					
721.11453	Phosphonium, trihexyltetradecyl-, salt with 1,1,1-trifluoro-N-[(trifluoromethyl)sulfonyl]methanesulfonamide (1:1).				
721.11454	Calcium manganese titanium oxide.				
721.11455	Rare earth oxide (generic).				
721.11456	Acid-modified polyether (generic).				
721.11457	Alkenoic acid polymer with 2-ethyl-2-(hydroxymethyl)-1,3-alkyldiol, 1,1'-methylenebis(4-isocyanatocarbomonocycle) and 3-methyl-1,5-alkyldiol (generic).				
721.11458	Bis-alkoxy substituted alkane, polymer with aminoalkanol (generic).				
*	*	*	*	*	*

§ 721.11453 Phosphonium, trihexyltetradecyl-, salt with 1,1,1-trifluoro-N-[(trifluoromethyl)sulfonyl]methanesulfonamide (1:1).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as phosphonium, trihexyltetradecyl-, salt with 1,1,1-trifluoro-N-[(trifluoromethyl)sulfonyl]methanesulfonamide (1:1) (PMN P–18–58; CASRN 460092–03–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:
(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=11.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11454 Calcium manganese titanium oxide.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as calcium manganese titanium oxide (PMN P–18–126; CASRN 153728–36–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to use the substance other than as a black pigment for architectural paint. It is a significant new use to manufacture or import greater than the confidential annual production volume identified in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11455 Rare earth oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as rare earth oxide (PMN P-18-199) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.82(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11456 Acid-modified polyether (generic).

Chemical substance and significant new uses subject to reporting. (1) The chemical substance identified generically as acid-modified polyether (PMN P-18-367) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (o). It is a significant new use to process the substance to a final product formulation of greater than 2% by weight.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=9.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

§ 721.11457 Alkenoic acid polymer with 2-ethyl-2-(hydroxymethyl)-1,3-alkyldiol, 1,1'-methylenebis(4-isocyanatocarbomonocycle) and 3-methyl-1,5-alkyldiol (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkenoic acid polymer with 2-ethyl-2-(hydroxymethyl)-1,3-alkyldiol, 1,1'-methylenebis(4-isocyanatocarbomonocycle) and 3-methyl-1,5-alkyldiol (PMN P-19-158) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11458 Bis-alkoxy substituted alkane, polymer with aminoalkanol (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as bis-alkoxy substituted alkane, polymer with aminoalkanol (PMN P-19-164) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in

§ 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) Limitations or revocation of certain notification requirements. The provisions of § 721.185 apply to this section.

[FR Doc. 2020-26003 Filed 12-4-20; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 413, 417, 476, 480, 484, and 495

[CMS-1735-CN]

RIN 0938-AU11

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Final Policy Changes and Fiscal Year 2021 Rates; Quality Reporting and Medicare and Medicaid Promoting Interoperability Programs Requirements for Eligible Hospitals and Critical Access Hospitals; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors in the final rule that appeared in the September 18, 2020 issue of the **Federal Register** titled “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Final Policy Changes and Fiscal Year 2021 Rates; Quality Reporting and Medicare and Medicaid Promoting Interoperability Programs Requirements for Eligible Hospitals and Critical Access Hospitals”.

DATES:

Effective Date: This correcting document is effective on December 1, 2020.

Applicability Date: The corrections in this correcting document are applicable to discharges occurring on or after October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Donald Thompson and Michele Hudson, (410) 786-4487.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2020–19637 of September 18, 2020 (85 FR 58432) there were a number of technical and typographical errors that are identified and corrected in the Correction of Errors section of this correcting document. The corrections in this correcting document are applicable to discharges occurring on or after October 1, 2020, as if they had been included in the document that appeared in the September 18, 2020 **Federal Register**.

II. Summary of Errors

A. Summary of Errors in the Preamble

On the following pages: 58435 through 58436, 58448, 58451, 58453, 58459, 58464, 58471, 58479, 58487, 58495, 58506, 58509, 58520, 58529, 58531 through 58532, 58537, 58540 through 58541, 58553 through 58556, 58559 through 58560, 58580 through 58583, 58585 through 58588, 58596, 58599, 58603 through 58604, 58606 through 58607, 58610, 58719, 58734, 58736 through 58737, 58739, 58741, 58842, 58876, 58893, and 58898 through 58900, we are correcting inadvertent typographical errors in the internal section references.

On page 58596, we are correcting an inadvertent typographical error in the date of the MedPAR data used for developing the Medicare Severity Diagnosis-Related Group (MS–DRG) relative weights.

On pages 58716 and 58717, we are correcting inadvertent errors in the ICD–10–PCS procedure codes describing the BAROSTIM NEO® System technology.

On pages 58721 and 58723, we are correcting inadvertent errors in the ICD–10–PCS procedure codes describing the Cefiderocol technology.

On page 58768, due to a conforming change to the Rural Floor Budget Neutrality adjustment (listed in the table titled “Summary of FY 2021 Budget Neutrality Factors” on page 59034) as discussed in section II.B. of this correcting document and the conforming changes to the Out-Migration Adjustment discussed in section II. D of this correcting document (with regard to Table 4A), we are correcting the 25th percentile wage index value across all hospitals.

On page 59006, in the discussion of Medicare bad debt policy, we are correcting inadvertent errors in the regulatory citations and descriptions.

B. Summary of Errors in the Addendum

On pages 59031 and 59037, we are correcting inadvertent typographical errors in the internal section references.

We are correcting an error in the version 38 ICD–10 MS–DRG assignment for some cases in the historical claims data in the FY 2019 MedPAR files used in the ratesetting for the FY 2021 IPPS/LTCH PPS final rule, which resulted in inadvertent errors in the MS–DRG relative weights (and associated average length-of-stay (LOS)). Additionally, the version 38 MS–DRG assignment and relative weights are used when determining total payments for purposes of all of the budget neutrality factors and the final outlier threshold. As a result, the corrections to the MS–DRG assignment under the ICD–10 MS–DRG GROUPER version 38 for some cases in the historical claims data in the FY 2019 MedPAR files and the recalculation of the relative weights directly affected the calculation of total payments and required the recalculation of all the budget neutrality factors and the final outlier threshold.

In addition, as discussed in section II.D. of this correcting document, we made updates to the calculation of Factor 3 of the uncompensated care payment methodology to reflect updated information on hospital mergers received in response to the final rule. Factor 3 determines the total amount of the uncompensated care payment a hospital is eligible to receive for a fiscal year. This hospital-specific payment amount is then used to calculate the amount of the interim uncompensated care payments a hospital receives per discharge. Per discharge uncompensated care payments are included when determining total payments for purposes of all of the budget neutrality factors and the final outlier threshold. As a result, the revisions made to the calculation of Factor 3 to address additional merger information directly affected the calculation of total payments and required the recalculation of all the budget neutrality factors and the final outlier threshold.

We made an inadvertent error in the Medicare Geographic Classification Review Board (MGCRB) reclassification status of one hospital in the FY 2021 IPPS/LTCH PPS final rule. Specifically, CCN 050481 is incorrectly listed in Table 2 as reclassified to its geographic “home” of CBSA 31084. The correct reclassification area is to CBSA 37100. This correction necessitated the recalculation of the FY 2021 wage index for CBSA 37100 and affected the final FY 2021 wage index with reclassification. The final FY 2021 IPPS wage index with reclassification is used when determining total payments for purposes of all budget neutrality factors (except for the MS–DRG reclassification and recalibration budget neutrality

factor and the wage index budget neutrality adjustment factor) and the final outlier threshold.

Due to the correction of the combination of errors listed previously (corrections to the MS–DRG assignment for some cases in the historical claims data and the resulting recalculation of the relative weights and average length of stay, revisions to Factor 3 of the uncompensated care payment methodology, and the correction to the MGCRB reclassification status of one hospital), we recalculated all IPPS budget neutrality adjustment factors, the fixed-loss cost threshold, the final wage indexes (and geographic adjustment factors (GAFs)), the national operating standardized amounts and capital Federal rate. Therefore, we made conforming changes to the following:

- On page 59034, the table titled “Summary of FY 2021 Budget Neutrality Factors”.
- On page 59037, the estimated total Federal capital payments and the estimated capital outlier payments.
- On page 59040, the calculation of the outlier fixed-loss cost threshold, total operating Federal payments, total operating outlier payments, the outlier adjustment to the capital Federal rate and the related discussion of the percentage estimates of operating and capital outlier payments.
- On page 59042, the table titled “Changes from FY 2020 Standardized Amounts to the FY 2021 Standardized Amounts”.

On page 59039, we are correcting a typographical error in the total cases from October 1, 2018 through September 31, 2019 used to calculate the average covered charge per case, which is then used to calculate the charge inflation factor.

On pages 59047 through 59048, in our discussion of the determination of the Federal hospital inpatient capital-related prospective payment rate update, due to the recalculation of the GAFs as well as corrections to the MS–DRG assignment for some cases in the historical claims data and the resulting recalculation of the relative weights and average length of stay, we have made conforming corrections to the capital Federal rate, the incremental budget neutrality adjustment factor for changes in the GAFs, and the outlier threshold (as discussed previously). As a result of these changes, we also made conforming corrections in the table showing the comparison of factors and adjustments for the FY 2020 capital Federal rate and FY 2021 capital Federal rate. As we noted in the final rule, the capital Federal rate is calculated using unrounded budget neutrality and outlier

adjustment factors. The unrounded GAF/DRG budget neutrality factors and the unrounded outlier adjustment to the capital Federal rate were revised because of these errors. However, after rounding these factors to 4 decimal places as displayed in the final rule, the rounded factors were unchanged from the final rule.

On page 59057, we are making conforming changes to the fixed-loss amount for FY 2021 site neutral payment rate discharges, and the high cost outlier (HCO) threshold (based on the corrections to the IPPS fixed-loss amount discussed previously).

On pages 59060 and 59061, we are making conforming corrections to the national adjusted operating standardized amounts and capital standard Federal payment rate (which also include the rates payable to hospitals located in Puerto Rico) in Tables 1A, 1B, 1C, and 1D as a result of the conforming corrections to certain budget neutrality factors and the outlier threshold previously described.

C. Summary of Errors in the Appendices

On pages 59062, 59070, 59074 through 59076, and 59085 we are correcting inadvertent typographical errors in the internal section references.

On pages 59064 through 59071, 59073 and 59074, and 59092 and 59093, in our regulatory impact analyses, we have made conforming corrections to the factors, values, and tables and accompanying discussion of the changes in operating and capital IPPS payments for FY 2021 and the effects of certain IPPS budget neutrality factors as a result of the technical errors that lead to changes in our calculation of the operating and capital IPPS budget neutrality factors, outlier threshold, final wage indexes, operating standardized amounts, and capital Federal rate (as described in section II.B. of this correcting document). These conforming corrections include changes to the following tables:

- On pages 59065 through 59069, the table titled “Table I—Impact Analysis of Changes to the IPPS for Operating Costs for FY 2021”.

- On pages 59073 and 59074, the table titled “Table II—Impact Analysis of Changes for FY 2021 Acute Care Hospital Operating Prospective Payment System (Payments per discharge)”.

- On pages 59092 and 59093, the table titled “Table III—Comparison of Total Payments per Case [FY 2020 Payments Compared to Final FY 2021 payments]”.

On pages 59076 through 59079, we are correcting the discussion of the “Effects of the Changes to

Uncompensated Care Payments for FY 2021” for purposes of the Regulatory Impact Analysis in Appendix A of the FY 2021 IPPS/LTCH PPS final rule, including the table titled “Modeled Uncompensated Care Payments for Estimated FY 2021 DSHs by Hospital Type: Uncompensated Care Payments (\$ in Millions)*—from FY 2020 to FY 2021” on pages 59077 and 59078, in light of the corrections discussed in section II.D. of this correcting document.

D. Summary of Errors in and Corrections to Files and Tables Posted on the CMS Website

We are correcting the errors in the following IPPS tables that are listed on pages 59059 and 59060 of the FY 2021 IPPS/LTCH PPS final rule and are available on the internet on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html>.

The tables that are available on the internet have been updated to reflect the revisions discussed in this correcting document.

Table 2—Case-Mix Index and Wage Index Table by CCN—FY 2021 Final Rule. As discussed in section II.B. of this correcting document, CCN 050481 is incorrectly listed as reclassified to its home geographic area of CBSA 31084. In this table, we are correcting the columns titled “Wage Index Payment CBSA” and “MGCRB Reclass” to accurately reflect its reclassification to CBSA 37100. This correction necessitated the recalculation of the FY 2021 wage index for CBSA 37100. Also, the corrections to the version 38 MS–DRG assignment for some cases in the historical claims data and the resulting recalculation of the relative weights and ALOS, corrections to Factor 3 of the uncompensated care payment methodology, and recalculation of all of the budget neutrality adjustments (as discussed in section II.B. of this correcting document) necessitated the recalculation of the rural floor budget neutrality factor which is the only budget neutrality factor applied to the FY 2021 wage indexes. Because the rural floor budget neutrality factor is applied to the FY 2021 wage indexes, we are making corresponding changes to the wage indexes listed in Table 2. In addition, as also discussed later in this section, because the wage indexes are one of the inputs used to determine the out-migration adjustment, some of the out migration adjustments changed. Therefore, we are making corresponding changes to some of the out-migration adjustments listed in Table 2. Also, as

discussed in section II.A. of this correcting document, we made a conforming change to the 25th percentile wage index value across all hospitals. Accordingly, we are making corresponding changes to the values for hospitals in the columns titled “FY 2021 Wage Index Prior to Quartile and Transition”, “FY 2021 Wage Index With Quartile”, “FY 2021 Wage Index With Quartile and Cap” and “Out-Migration Adjustment”. We also updated footnote number 6 to reflect the conforming change to the 25th percentile wage index value across all hospitals.

Table 3.—Wage Index Table by CBSA—FY 2021 Final Rule. As discussed in section II.B. of this correcting document, CCN 050481 is incorrectly listed in Table 2 as reclassified to its home geographic area of CBSA 31084 instead of reclassified to CBSA 37100. This correction necessitated the recalculation of the FY 2021 wage index for CBSA 37100. Also, corrections to the version 38 MS–DRG assignment for some cases in the historical claims data and the resulting recalculation of the relative weights and ALOS, corrections to Factor 3 of the uncompensated care payment methodology, and the recalculation of all of the budget neutrality adjustments (as discussed in section II.B. of this correcting document) necessitated the recalculation of the rural floor budget neutrality factor which is the only budget neutrality factor applied to the FY 2021 wage indexes. Because the rural floor budget neutrality factor is applied to the FY 2021 wage indexes, we are making corresponding changes to the wage indexes and GAFs of all CBSAs listed in Table 3. Specifically, we are correcting the values and flags in the columns titled “Wage Index”, “GAF”, “Reclassified Wage Index”, “Reclassified GAF”, “State Rural Floor”, “Eligible for Rural Floor Wage Index”, “Pre-Frontier and/or Pre-Rural Floor Wage Index”, “Reclassified Wage Index Eligible for Frontier Wage Index”, “Reclassified Wage Index Eligible for Rural Floor Wage Index”, and “Reclassified Wage Index Pre-Frontier and/or Pre-Rural Floor”.

Table 4A.—List of Counties Eligible for the Out-Migration Adjustment under Section 1886(d)(13) of the Act—FY 2021 Final Rule. As discussed in section II.B. of this correcting document, CCN 050481 is incorrectly listed in Table 2 as reclassified to its home geographic area of CBSA 31084 instead of reclassified to CBSA 37100. This correction necessitated the recalculation of the FY 2021 wage index for CBSA 37100. Also, corrections to the version 38 MS–DRG assignment for some cases

in the historical claims data and the resulting recalculation of the relative weights and ALOS, corrections to Factor 3 of the uncompensated care payment methodology, and the recalculation of all of the budget neutrality adjustments (as discussed in section II.B. of this correcting document) necessitated the recalculation of the rural floor budget neutrality factor which is the only budget neutrality factor applied to the FY 2021 wage indexes. As a result, as discussed previously, we are making corresponding changes to the FY 2021 wage indexes. Because the wage indexes are one of the inputs used to determine the out-migration adjustment, some of the out migration adjustments changed. Therefore, we are making corresponding changes to some of the out-migration adjustments listed in Table 4A. Specifically, we are correcting the values in the column titled “FY 2021 Out Migration Adjustment”.

Table 5.—List of Medicare Severity Diagnosis-Related Groups (MS–DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay—FY 2021. We are correcting this table to reflect the recalculation of the relative weights, geometric average length-of-stay (LOS), and arithmetic mean LOS as a result of the corrections to the version 38 MS–DRG assignment for some cases in the historical claims data used in the calculations (as discussed in section II.B. of this correcting document).

Table 7B.—Medicare Prospective Payment System Selected Percentile Lengths of Stay: FY 2019 MedPAR Update—March 2020 GROUPER Version 38 MS–DRGs. We are correcting this table to reflect the recalculation of the relative weights, geometric average LOS, and arithmetic mean LOS as a result of the corrections to the version 38 MS–DRG assignment for some cases in the historical claims data used in the calculations (as discussed in section II.B. of this correcting document).

Table 18.—FY 2021 Medicare DSH Uncompensated Care Payment Factor 3. For the FY 2021 IPPS/LTCH PPS final rule, we published a list of hospitals that we identified to be subsection (d) hospitals and subsection (d) Puerto Rico hospitals projected to be eligible to receive uncompensated care interim payments for FY 2021. As stated in the FY 2021 IPPS/LTCH PPS final rule (85 FR 58834 and 58835), we allowed the public an additional period after the issuance of the final rule to review and submit comments on the accuracy of the list of mergers that we identified in the final rule. Based on the comments received during this additional period, we are updating this table to reflect the

merger information received in response to the final rule and to revise the Factor 3 calculations for purposes of determining uncompensated care payments for the FY 2021 IPPS/LTCH PPS final rule.

We are revising Factor 3 for all hospitals to reflect the updated merger information received in response to the final rule. We are also revising the amount of the total uncompensated care payment calculated for each DSH-eligible hospital. The total uncompensated care payment that a hospital receives is used to calculate the amount of the interim uncompensated care payments the hospital receives per discharge; accordingly, we have also revised these amounts for all DSH-eligible hospitals. These corrections will be reflected in Table 18 and the Medicare DSH Supplemental Data File. Per discharge uncompensated care payments are included when determining total payments for purposes of all of the budget neutrality factors and the final outlier threshold. As a result, these corrections to uncompensated care payments impacted the calculation of all the budget neutrality factors as well as the outlier fixed-loss cost threshold. In section IV.C. of this correcting document, we have made corresponding revisions to the discussion of the “Effects of the Changes to Medicare DSH and Uncompensated Care Payments for FY 2021” for purposes of the Regulatory Impact Analysis in Appendix A of the FY 2021 IPPS/LTCH PPS final rule to reflect the corrections discussed previously and to correct minor typographical errors.

The files that are available on the internet have been updated to reflect the corrections discussed in this correcting document.

III. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice

and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects technical and typographical errors in the preamble, addendum, payment rates, tables, and appendices included or referenced in the FY 2021 IPPS/LTCH PPS final rule, but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the FY 2021 IPPS/LTCH PPS final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public’s interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2021 IPPS/LTCH PPS final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply implementing correctly the methodologies and policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the FY 2021 IPPS/LTCH PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe we have good cause to waive

the notice and comment and effective date requirements. Moreover, even if these corrections were considered to be retroactive rulemaking, they would be authorized under section 1871(e)(1)(A)(ii) of the Act, which permits the Secretary to issue a rule for the Medicare program with retroactive effect if the failure to do so would be contrary to the public interest. As we have explained previously, we believe it would be contrary to the public interest not to implement the corrections in this correcting document because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2021 IPPS/LTCH PPS final rule accurately reflects our policies.

IV. Correction of Errors

In FR Doc. 2020–19637 of September 18, 2020 (85 FR 58432), we are making the following corrections:

A. Corrections of Errors in the Preamble

1. On page 58435, third column, third full paragraph, line 1, the reference, “section II.G.9.b.” is corrected to read “section II.F.9.b.”.

2. On page 58436, first column, first full paragraph, line 10, the reference, “section II.G.9.c.” is corrected to read “section II.F.9.c.”.

3. On page 58448, lower half of the page, second column, first partial paragraph, lines 19 and 20, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”.

4. On page 58451, first column, first full paragraph, line 12, the reference, “section II.E.16.” is corrected to read “section II.D.16.”.

5. On page 58453, third column, third full paragraph, line 13, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”.

6. On page 58459, first column, fourth paragraph, line 3, the reference, “section II.E.1.b.” is corrected to read “section II.D.1.b.”.

7. On page 58464, bottom quarter of the page, second column, partial paragraph, lines 4 and 5, the phrase “and section II.E.15. of this final rule,” is corrected to read “and this final rule.”.

8. On page 58471, first column, first partial paragraph, lines 12 and 13, the reference, “section II.E.15.” is corrected to read “section II.D.15.”.

9. On page 58479, first column, first partial paragraph:

a. Line 6, the reference, “section II.E.16.” is corrected to read “section II.D.16.”.

b. Line 15, the reference, “section II.E.1.b.” is corrected to read “section II.D.1.b.”.

10. On page 58487, first column, first full paragraph, lines 20 through 21, the reference, “section II.E.12.b.” is corrected to read “section II.D.12.b.”.

11. On page 58495, middle of the page, third column, first full paragraph, line 5, the reference, “section II.E.1.b.” is corrected to read “section II.D.1.b.”.

12. On page 58506:

a. Top half of the page, second column, first full paragraph, line 8, the reference, “section II.E.1.b.” is corrected to read “section II.D.1.b.”.

b. Bottom half of the page:

(1) First column, first paragraph, line 5, the reference, “section II.E.1.b.” is corrected to read “section II.D.1.b.”.

(2) Second column, third full paragraph, line 5, the reference, “section II.E.1.b.” is corrected to read “section II.D.1.b.”.

13. On page 58509:

a. First column, last paragraph, last line, the reference, “section II.E.2.” is corrected to read “section II.D.2.”.

b. Third column, last paragraph, line 5, the reference, “section II.E.1.b.” is corrected to read “section II.D.1.b.”.

14. On page 58520, second column, second full paragraph, line 22, the reference, “section II.E.11.” is corrected to read “section II.D.11.”.

15. On page 58529, bottom half of the page, first column, last paragraph, lines 11 and 12, the reference, “section II.E.12.a.” is corrected to read “section II.D.12.a.”.

16. On page 58531:

a. Top of the page, second column, last paragraph, line 3, the reference, “section II.E.4.” is corrected to read “section II.D.4.”.

b. Bottom of the page, first column, last paragraph, line 3, the reference, “section II.E.16.” is corrected to read “section II.D.16.”.

17. On page 58532, top of the page, second column, first partial paragraph, line 5, the reference, “section II.E.4.” is corrected to read “section II.D.4.”.

18. On page 58537:

a. Second column, last paragraph, line 6, the reference, “section II.E.11.c.5.” is corrected to read “section II.D.11.c.(5).”.

b. Third column, fifth paragraph: (1) Lines 8 and 9, the reference, “section II.E.11.c.1.” is corrected to read “section II.D.11.c.(1).”.

(2) Line 29, the reference, “section II.E.11.c.1.” is corrected to read “section II.D.11.c.(1).”.

19. On page 58540, first column, first partial paragraph, line 19, the reference, “section II.E.13.” is corrected to read “section II.D.13.”.

20. On page 58541, second column, first partial paragraph, lines 9 and 10, the reference, “section II.E.1.b.” is corrected to read “section II.D.1.b.”.

21. On page 58553, second column, third full paragraph, line 20, the reference, “section II.E.16.” is corrected to read “section II.D.16.”.

22. On page 58554, first column, fifth full paragraph, line 1, the reference, “section II.E.13.” is corrected to read “section II.D.13.”.

23. On page 58555, second column, fifth full paragraph, lines 8 and 9, the reference, “section II.E.13.” is corrected to read “section II.D.13.”.

24. On page 58556:

a. First column, first partial paragraph, line 5, the reference, “section II.E.16.” is corrected to read “section II.D.16.”.

b. Second column, first full paragraph:

(1) Line 6, the reference, “section II.E.16.” is corrected to read “section II.D.16.”.

(2) Line 38, the reference, “section II.E.16.” is corrected to read “section II.D.16.”.

25. On page 58559, bottom half of the page, third column, first full paragraph, line 21, the reference, “section II.E.12.c.” is corrected to read “section II.D.12.c.”.

26. On page 58560, first column, first full paragraph, line 14, the reference, “section II.E.16.” is corrected to read “section II.D.16.”.

27. On page 58580, third column, last paragraph, line 3, the reference, “section II.E.13. of this final rule,” is corrected to read “this final rule.”.

28. On page 58581:

a. Middle of the page:

(1) First column, first paragraph, line 3, the reference, “section II.E.13. of this final rule,” is corrected to read “this final rule.”.

(2) Third column, last paragraph, line 3, the reference, “section II.E.13. of this final rule,” is corrected to read “this final rule.”.

b. Bottom of the page, third column, last paragraph, line 3, the reference, “section II.E.13. of this final rule,” is corrected to read “this final rule.”.

29. On page 58582:

a. Middle of the page:

(1) First column, first paragraph, line 3, the reference, “section II.E.13. of this final rule,” is corrected to read “this final rule.”.

(2) Third column, first full paragraph, line 3, the reference, “section II.E.13. of this final rule,” is corrected to read “this final rule.”.

b. Bottom of the page, second column, first full paragraph, lines 2 and 3, the reference, “in section II.E.13. of this final rule,” is corrected to read “this final rule.”.

30. On page 58583:

a. Top of the page, second column, last paragraph, line 3, the reference,

“section II.E.13. of this final rule,” is corrected to read “this final rule.”

b. Bottom of the page:

(1) First column, last paragraph, line 3, the reference, “in section II.E.13. of this final rule,” is corrected to read “this final rule.”

(2) Third column, last paragraph, line 3, the reference, “section II.E.13. of this final rule,” is corrected to read “this final rule.”

31. On page 58585, top of the page, third column, last paragraph, lines 3 and 4, the reference, “in section II.E.13. of this final rule,” is corrected to read “this final rule.”

32. On page 58586:

a. Second column, last partial paragraph, line 4, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”

b. Third column:

(1) First partial paragraph:

(a) Lines 12 and 13, the reference, “in section II.E.2.b. of this final rule,” is corrected to read “this final rule.”

(b) Lines 20 and 21, the reference, “in section II.E.8.a. of this final rule,” is corrected to read “this final rule.”

(2) Last partial paragraph:

(a) Line 3, the reference, “section II.E.4. of this final rule,” is corrected to read “this final rule.”

(b) Line 38, the reference, “section II.E.7.b. of this final rule,” is corrected to read “this final rule.”

33. On page 58587:

a. Top of the page, second column, partial paragraph, line 7, the reference, “section II.E.8.a. of this final rule,” is corrected to read “this final rule.”

b. Bottom of the page:

(1) Second column, last partial paragraph, line 3, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”

(2) Third column, first partial paragraph, line 1, the reference, “section II.E.8.a.” is corrected to read “section II.D.8.a.”

34. On page 58588, first column:

a. First full paragraph, line 3, the reference, “section II.E.4.” is corrected to read “section II.D.4.”

b. Third full paragraph, line 3, the reference, “section II.E.7.b.” is corrected to read “section II.D.7.b.”

c. Fifth full paragraph, line 3, the reference, “section II.E.8.a.” is corrected to read “section II.D.8.a.”

35. On page 58596:

a. First column:

(1) First full paragraph, line 1, the reference, “section II.E.5.a.” is corrected to read “section II.D.5.a.”

(2) Last paragraph, line 5, the reference, “section II.E.1.b.” is corrected to read “section II.D.1.b.”

c. Second column, first full paragraph, line 14, the date “March 31, 2019” is corrected to read “March 31, 2020”.

36. On page 58599, first column, second full paragraph, line 1, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”

37. On page 58603, first column:

a. First partial paragraph, line 13, the reference, “section II.G.1.a.(2).b.” is corrected to read “section II.F.1.a.(2).b.”

b. Last partial paragraph, line 21, the reference, “section II.G.1.a.(2).b.” is corrected to read “section II.F.1.a.(2).b.”

38. On page 58604, third column, first partial paragraph, line 38, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”

39. On page 58606:

a. First column, second partial paragraph, line 13, the reference, “section II.G.9.b.” is corrected to read “section II.F.9.b.”

b. Second column:

(1) First partial paragraph, line 3, the reference, “section II.G.9.b.” is corrected to read “section II.F.9.b.”

(2) First full paragraph:

(a) Line 29, the reference, “section II.G.8.” is corrected to read “section II.F.8.”

(b) Line 36, “section II.G.8.” is corrected to read “section II.F.8.”

e. Third column, first full paragraph:

(1) Lines 4 and 5, the reference, “section II.G.9.b.” is corrected to read “section II.F.9.b.”

(2) Line 13, the reference “section II.G.9.b.” is corrected to read “section II.F.9.b.”

40. On page 58607:

a. First column, first full paragraph:

(1) Line 7, the reference, “section II.G.9.b.” is corrected to read “section II.F.9.b.”

(2) Line 13, the reference, “section II.G.9.b.” is corrected to read “section II.F.9.b.”

c. Second column, first partial paragraph:

(1) Line 20, the reference, “section II.G.9.c.” is corrected to read “section II.F.9.c.”

(2) Line 33, the reference, “section II.G.9.c.” is corrected to read “section II.F.9.c.”

41. On page 58610:

a. Second column, last partial paragraph, lines 1 and 16, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”

b. Third column, first partial paragraph:

(1) Line 6, the reference, “section II.G.1.a.(2).b.” is corrected to read “section II.F.1.a.(2).b.”

(2) Lines 20 and 21, the reference, “section II.G.1.a.(2).b.” is corrected to read “section II.F.1.a.(2).b.”

42. On page 58716, first column, second full paragraph, lines 14 through 19, the phrase, “with 03HK0MZ (Insertion of stimulator lead into right internal carotid artery, open approach) or 03HL0MZ (Insertion of stimulator lead into left internal carotid artery, open approach)” is corrected to read “with 03HK3MZ (Insertion of stimulator lead into right internal carotid artery, percutaneous approach) or 03HL3MZ (Insertion of stimulator lead into left internal carotid artery, percutaneous approach).”

43. On page 58717, first column, first partial paragraph, line 5, the phrase, “with 03HK0MZ or 03HL0MZ” is corrected to read “with 03HK3MZ or 03HL3MZ.”

44. On page 58719:

a. First column, last partial paragraph, line 12, the reference, “section II.G.8.” is corrected to read “section II.F.8.”

b. Third column, first partial paragraph, line 15, the reference, “section II.G.8.” is corrected to read “section II.F.8.”

45. On page 58721, third column, second full paragraph, line 17, the phrase, “XW03366 or XW04366” is corrected to read “XW033A6 (Introduction of cefiderocol anti-infective into peripheral vein, percutaneous approach, new technology group 6) or XW043A6 (Introduction of cefiderocol anti-infective into central vein, percutaneous approach, new technology group 6).”

46. On page 58723, second column, first partial paragraph, line 14, the phrase, “procedure codes XW03366 or XW04366” is corrected to read “procedure codes XW033A6 or XW043A6.”

47. On page 58734, third column, second full paragraph, line 26, the reference, “section II.G.9.b.” is corrected to read “section II.F.9.b.”

48. On page 58736, second column, first full paragraph, line 27, the reference, “II.G.9.b.” is corrected to read “II.F.9.b.”

49. On page 58737, third column, first partial paragraph, line 5, the reference, “section II.G.1.d.” is corrected to read “section II.F.1.d.”

50. On page 58739, third column, first full paragraph, line 21, the reference, “section II.G.8.” is corrected to read “section II.F.8.”

51. On page 58741, third column, second partial paragraph, line 17, the reference, “section II.G.9.a.” is corrected to read “section II.F.9.a.”

52. On page 58768, third column, first partial paragraph, line 3, the figure “0.8465” is corrected to read “0.8469”.

53. On page 58842, second column, first full paragraph, lines 19 and 35, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”.

54. On page 58876, first column, first full paragraph, line 18, the reference, “section II.E.” is corrected to read “section II.D.”.

55. On page 58893, first column, second full paragraph, line 5, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”.

56. On page 58898, third column, first full paragraph, line 9, the reference, “section II.E.” is corrected to read “section II.D.”.

57. On page 58899, third column, first full paragraph, line 24, the reference,

“section II.E.1.” is corrected to read “section II.D.1.”.

58. On page 58900, first column, third paragraph, line 26, the reference, “section II.E.” is corrected to read “section II.D.”.

59. On page 59006, second column, second full paragraph:

a. Line 4, the regulation citation, “(c)(3)(i)” is corrected to read “(c)(1)(ii)”.

b. Line 12, the regulation citation, “(c)(3)(ii)” is corrected to read “(c)(2)(ii)”.

c. Lines 17 and 18, the phrase “charged to an uncollectible receivables account” is corrected to read, “recorded as an implicit price concession”.

B. Correction of Errors in the Addendum

1. On page 59031:

a. First column:

(1) First full paragraph, line 7, the reference, “section II.G.” is corrected to read “section II.E.”.

(2) Second partial paragraph, lines 26 and 27, the reference, “section II.G.” is corrected to read “section II.E.”.

b. Second column, first partial paragraph:

(1) Line 5, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”.

(2) Line 22, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”.

2. On page 59034, at the top of the page, the table titled “Summary of FY 2021 Budget Neutrality Factors” is corrected to read:

Summary of FY 2021 Budget Neutrality Factors	
MS-DRG Reclassification and Recalibration Budget Neutrality Factor	0.997975
Wage Index Budget Neutrality Factor	1.000447
Reclassification Budget Neutrality Factor	0.986616
*Rural Floor Budget Neutrality Factor	0.993446
Rural Demonstration Budget Neutrality Factor	0.999626
Stem Cell Acquisition Budget Neutrality Factor	0.999847
Low Wage Index Hospital Policy Budget Neutrality Factor	0.997970
Transition Budget Neutrality Factor	0.998851

*The rural floor budget neutrality factor is applied to the national wage indexes while the rest of the budget neutrality adjustments are applied to the standardized amounts.

3. On page 59037, second column:

a. First full paragraph, line 4, the phrase “(estimated capital outlier payments of \$429,431,834 divided by (estimated capital outlier payments of \$429,431,834 plus the estimated total capital Federal payment of \$7,577,697,269))” is corrected to read: “(estimated capital outlier payments of \$429,147,874 divided by (estimated capital outlier payments of \$429,147,874 plus the estimated total

capital Federal payment of \$7,577,975,637))”

b. Last partial paragraph, line 8, the reference, “section II.E.2.b.” is corrected to read “section II.D.2.b.”.

4. On page 59039, third column, last paragraph, lines 18 and 19, the phrase “9,519,120 cases” is corrected to “9,221,466 cases”.

5. On page 59040:

a. Top of the page, third column: (1) First partial paragraph:

(a) Line 9, the figure “\$29,051” is corrected to read “\$29,064”.

(b) Line 11, the figure “\$4,955,813,978” is corrected to read “\$4,951,017,650”

(c) Line 12, the figure “\$92,027,177,037” is corrected to read “\$91,937,666,182”.

(d) Line 26, the figure “\$29,108” is corrected to read “\$29,121”.

(e) Line 33, the figure “\$29,051” is corrected to read “\$29,064”.

(2) First full paragraph, line 11, the phrase “threshold for FY 2021 (which

reflects our” is corrected to read “threshold for FY 2021 of \$29,064 (which reflects our”.

b. Bottom of the page, the untitled table is corrected to read as follows:

	Operating Standardized Amounts	Capital Federal Rate*
National	0.949	0.946604

*The adjustment factor for the capital Federal rate includes an adjustment to the estimated percentage of FY 2021 capital outlier payments for capital outlier reconciliation, as discussed previously and in section II.A.4.j.(1). in the Addendum to this final rule.

6. On pages 59042, the table titled “CHANGES FROM FY 2020 STANDARDIZED AMOUNTS TO THE

FY 2021 STANDARDIZED AMOUNTS” is corrected to read as follows:

CHANGES FROM FY 2020 STANDARDIZED AMOUNTS TO THE FY 2021 STANDARDIZED AMOUNTS

	Hospital Submitted Quality Data and is a Meaningful EHR User	Hospital Submitted Quality Data and is NOT a Meaningful EHR User	Hospital Did NOT Submit Quality Data and is a Meaningful EHR User	Hospital Did NOT Submit Quality Data and is NOT a Meaningful EHR User
FY 2021 Base Rate after removing: 1. FY 2020 Geographic Reclassification Budget Neutrality (0.985447) 2. FY 2020 Operating Outlier Offset (0.949) 3. FY 2020 Rural Demonstration Budget Neutrality Factor (0.999771) 4. FY 2020 Lowest Quartile Budget Neutrality Factor (0.997984) 5. FY 2020 Transition Budget Neutrality Factor (0.998835)	If Wage Index is Greater Than 1.0000: Labor (68.3%): \$4,247.95 Nonlabor (31.7%): \$1,971.59 If Wage Index is less Than or Equal to 1.0000: Labor (62%): \$3,856.11 Nonlabor (38%): \$2,363.43	If Wage Index is Greater Than 1.0000: Labor (68.3%): \$4,247.95 Nonlabor (31.7%): \$1,971.59 If Wage Index is less Than or Equal to 1.0000: Labor (62%): \$3,856.11 Nonlabor (38%): \$2,363.43	If Wage Index is Greater Than 1.0000: Labor (68.3%): \$4,247.95 Nonlabor (31.7%): \$1,971.59 If Wage Index is less Than or Equal to 1.0000: Labor (62%): \$3,856.11 Nonlabor (38%): \$2,363.43	If Wage Index is Greater Than 1.0000: Labor (68.3%): \$4,247.95 Nonlabor (31.7%): \$1,971.59 If Wage Index is less Than or Equal to 1.0000: Labor (62%): \$3,856.11 Nonlabor (38%): \$2,363.43
FY 2021 Update Factor	1.024	1.006	1.0180	1
FY 2021 MS-DRG Reclassification and Recalibration Budget Neutrality Factor	0.997975	0.997975	0.997975	0.997975
FY 2021 Wage Index Budget Neutrality Factor	1.000447	1.000447	1.000447	1.000447
FY 2021 Reclassification Budget Neutrality Factor	0.986616	0.986616	0.986616	0.986616
FY 2021 Rural Demonstration Budget Neutrality Factor	0.999626	0.999626	0.999626	0.999626
FY 2021 Stem Cell Acquisition Budget Neutrality Factor	0.999847	0.999847	0.999847	0.999847
FY 2021 Lowest Quartile Budget Neutrality Factor	0.997970	0.997970	0.997970	0.997970
FY 2021 Transition Budget Neutrality Factor	0.998851	0.998851	0.998851	0.998851
FY 2021 Operating Outlier Factor	0.949	0.949	0.949	0.949
Adjustment for FY 2021 Required under Section 414 of Pub. L. 114-10 (MACRA)	1.005	1.005	1.005	1.005
National Standardized Amount for FY 2021 if Wage Index is Greater Than 1.0000; Labor/Non-Labor Share Percentage (68.3/31.7)	Labor: \$4,071.57 Nonlabor: \$1,889.74	Labor: \$4000.00 Nonlabor: \$1,856.52	Labor: \$4,047.71 Nonlabor: \$1,878.67	Labor: \$3,976.14 Nonlabor: \$1,845.45
National Standardized Amount for FY 2021 if Wage Index is Less Than or Equal to 1.0000; Labor/Non-Labor Share Percentage (62/38)	Labor: \$3,696.01 Nonlabor: \$2,265.30	Labor: \$3,631.04 Nonlabor: \$2,225.48	Labor: \$3,674.36 Nonlabor: \$2,252.02	Labor: \$3,609.39 Nonlabor: \$2,212.20

7. On page 59047:
 a. Second column:
 (1) Second full paragraph, line 43, the figure “0.9984” is corrected to read “0.9983”.
 (2) Last paragraph:
 (a) Line 17, the figure “0.9984” is corrected to read “0.9983”.

(b) Line 18, the figure “0.9984” is corrected to read “0.9983”.
 b. Third column:
 (1) Third paragraph, line 4, the figure “0.9984” is corrected to read “0.9983”.
 (2) Last paragraph, line 9, the figure “\$466.22” is corrected to read “\$466.21”.

8. On page 59048:
 a. The chart titled “COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2020 CAPITAL FEDERAL RATE AND THE FY 2021 CAPITAL FEDERAL RATE” is corrected to read as follows:

	FY 2020	FY 2021	Change	Percent Change
Update Factor ¹	1.0150	1.0110	1.0110	1.10
GAF/DRG Adjustment Factor ¹	0.9948	0.9971	0.9971	-0.29
Outlier Adjustment Factor ²	0.9463	0.9466	1.0003	0.03
Capital Federal Rate	\$462.33	\$466.21	1.0084	0.84 ³

¹ The update factor and the GAF/DRG budget neutrality adjustment factors are built permanently into the capital Federal rates. Thus, for example, the incremental change from FY 2020 to FY 2021 resulting from the application of the 0.9971 GAF/DRG budget neutrality adjustment factor for FY 2021 is a net change of 0.9971 (or -0.29 percent).

² The outlier reduction factor is not built permanently into the capital Federal rate; that is, the factor is not applied cumulatively in determining the capital Federal rate. Thus, for example, the net change resulting from the application of the FY 2021 outlier adjustment factor is 0.9466/0.9463 or 1.0003 (or 0.03 percent).

³ Percent change may not sum due to rounding.

b. Lower half of the page, first column, second full paragraph, last line, the figure “\$29,051” is corrected to read “\$29,064”.

a. Line 11, the figure “\$29,051” is corrected to read “\$29,064”.
 b. Last line, the figure “\$29,051” is corrected to read “\$29,064”.

AMOUNTS, LABOR/NONLABOR (68.3 PERCENT LABOR SHARE/31.7 PERCENT NONLABOR SHARE IF WAGE INDEX IS GREATER THAN 1) —FY 2021” is corrected to read as follows:

9. On page 59057, second column, second full paragraph:

10. On page 59060, the table titled “TABLE 1A—NATIONAL ADJUSTED OPERATING STANDARDIZED

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (68.3 PERCENT LABOR SHARE/31.7 PERCENT NONLABOR SHARE IF WAGE INDEX IS GREATER THAN 1)--FY 2021

Hospital Submitted Quality Data and is a Meaningful EHR User (Update = 2.4 Percent)		Hospital Submitted Quality Data and is NOT a Meaningful EHR User (Update = 0.6 Percent)		Hospital Did NOT Submit Quality Data and is a Meaningful EHR User (Update = 1.8 Percent)		Hospital Did NOT Submit Quality Data and is NOT a Meaningful EHR User (Update = 0 Percent)	
Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor
\$4,071.57	\$1,889.74	\$4,000.00	\$1,856.52	\$4,047.71	\$1,878.67	\$3,976.14	\$1,845.45

11. On page 59061, top of the page:
 a. The table titled “TABLE 1B—NATIONAL ADJUSTED OPERATING

STANDARDIZED AMOUNTS, LABOR/NONLABOR (62 PERCENT LABOR SHARE/38 PERCENT NONLABOR

SHARE IF WAGE INDEX IS LESS THAN OR EQUAL TO 1)—FY 2021” is corrected to read as follows:

TABLE 1B.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE IF WAGE INDEX IS LESS THAN OR EQUAL TO 1)—FY 2021

Hospital Submitted Quality Data and is a Meaningful EHR User (Update = 2.4 Percent)		Hospital Submitted Quality Data and is NOT a Meaningful EHR User (Update = 0.6 Percent)		Hospital Did NOT Submit Quality Data and is a Meaningful EHR User (Update = 1.8 Percent)		Hospital Did NOT Submit Quality Data and is NOT a Meaningful EHR User (Update = 0 Percent)	
Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor
\$3,696.01	\$2,265.30	\$3,631.04	\$2,225.48	\$3,674.36	\$2,252.02	\$3,609.39	\$2,212.20

b. The table titled “Table 1C—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR HOSPITALS IN PUERTO RICO,

LABOR/NONLABOR (NATIONAL: 62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE BECAUSE WAGE INDEX IS LESS THAN OR EQUAL TO

1)—FY 2021” is corrected to read as follows:

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR HOSPITALS IN PUERTO RICO, LABOR/NONLABOR (NATIONAL: 62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE BECAUSE WAGE INDEX IS LESS THAN OR EQUAL TO 1) FY 2021

Standardized Amount	Rates if Wage Index is Greater Than 1		Rates if Wage Index is Less Than or Equal to 1	
	Labor	Nonlabor	Labor	Nonlabor
National ¹	Not Applicable	Not Applicable	\$3,696.01	\$2,265.30

¹ For FY 2021, there are no CBSAs in Puerto Rico with a national wage index greater than 1.

c. The table titled “TABLE 1D—CAPITAL STANDARD FEDERAL

PAYMENT RATE—FY 2021” is corrected to read as follows:

TABLE 1D—CAPITAL STANDARD FEDERAL PAYMENT RATE—FY 2021

	Rate
National	466.21

C. Corrections of Errors in the Appendices

1. On page 59062, first column, second full paragraph:

a. Line 9, the reference “sections II.G.5. and 6.” is corrected to read “sections II.F.5. and 6.”

b. Line 11, the reference “section II.G.6.” is corrected to read “section II.F.6.”

3. On page 59064, third column, second full paragraph, last line, the figures “2,049, and 1,152” are corrected to read “2,050 and 1,151”.

4. On page 59065 through 59069, the table and table notes for the table titled “TABLE I.—IMPACT ANALYSIS OF CHANGES TO THE IPPS FOR OPERATING COSTS FOR FY 2021” are corrected to read as follows:

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TABLE I.—IMPACT ANALYSIS OF CHANGES TO THE IPPS FOR OPERATING COSTS FOR FY 2021

	Number of Hospitals ¹	Hospital Rate Update and Adjustment under MACRA (1) ²	FY 2021 Weights and DRG Changes with Application of Recalibration Budget Neutrality (2) ³	FY 2021 Wage Data with Application of Wage Budget Neutrality (3) ⁴	FY 2021 MGCRB Reclassifications (4) ⁵	Rural Floor with Application of National Rural Floor Budget Neutrality (5) ⁶	Application of the Frontier State Wage Index and Outmigration Adjustment (6) ⁷	All FY 2021 Changes (7) ⁸
All Hospitals	3,201	2.8	0.0	0.0	0.0	0.0	0.1	2.5
By Geographic Location:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Urban hospitals	2,462	2.9	0.0	0.0	-0.1	0.0	0.1	2.5
Rural hospitals	739	2.6	-0.3	0.0	1.0	-0.2	0.1	2.2
Bed Size (Urban):	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0-99 beds	635	2.8	-0.5	-0.1	-0.8	0.1	0.3	2.0
100-199 beds	756	2.9	-0.1	0.0	-0.1	0.1	0.2	2.4
200-299 beds	426	2.9	-0.1	0.0	0.3	0.1	0.1	2.5
300-499 beds	422	2.9	0.0	-0.1	0.0	0.0	0.2	2.4
500 or more beds	223	2.8	0.2	0.1	-0.2	-0.1	0.0	2.7
Bed Size (Rural):	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0-49 beds	312	2.5	-0.5	-0.1	0.1	-0.2	0.2	2.0
50-99 beds	254	2.5	-0.3	0.0	0.7	-0.1	0.2	2.1
100-149 beds	95	2.6	-0.3	-0.1	1.3	-0.2	0.0	2.2
150-199 beds	39	2.7	-0.2	0.0	1.0	-0.2	0.2	2.3
200 or more beds	39	2.7	-0.1	0.1	1.7	-0.2	0.0	2.3
Urban by Region:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
New England	112	2.9	0.1	-0.8	1.8	2.3	0.1	2.7
Middle Atlantic	305	2.9	0.0	0.6	0.3	-0.4	0.2	2.9
East North Central	381	2.9	0.0	0.1	-0.3	-0.3	0.0	2.5
West North Central	160	2.8	0.0	-0.5	-0.8	-0.3	0.6	2.0
South Atlantic	402	2.9	0.0	0.1	-0.5	-0.3	0.0	2.5
East South Central	144	2.9	0.0	0.0	-0.4	-0.3	0.0	2.4
West South Central	364	2.8	0.0	0.1	-0.6	-0.3	0.0	2.5
Mountain	172	2.8	-0.1	-0.5	-0.3	0.1	0.3	1.8
Pacific	372	2.8	0.1	-0.1	0.3	0.6	0.1	2.7
Puerto Rico	50	2.9	0.1	-0.9	-1.0	0.2	0.1	1.9
Rural by Region:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
New England	19	2.7	0.0	0.2	0.2	-0.2	0.0	2.4
Middle Atlantic	50	2.6	-0.2	0.2	1.2	-0.2	0.0	2.2
East North Central	114	2.5	-0.3	0.1	0.7	-0.1	0.0	2.2
West North Central	89	2.4	-0.4	0.0	0.0	-0.1	0.2	2.0
South Atlantic	114	2.7	-0.2	0.0	1.3	-0.2	0.1	1.9

	Number of Hospitals ¹	Hospital Rate Update and Adjustment under MACRA (1) ²	FY 2021 Weights and DRG Changes with Application of Recalibration of Budget Neutrality (2) ³	FY 2021 Wage Data with Application of Wage Budget Neutrality (3) ⁴	FY 2021 MGCRB Reclassifications (4) ⁵	Rural Floor with Application of National Rural Floor Budget Neutrality (5) ⁶	Application of the Frontier State Wage Index and Outmigration Adjustment (6) ⁷	All FY 2021 Changes (7) ⁸
East South Central	144	2.8	-0.2	-0.1	1.8	-0.3	0.1	2.4
West South Central	136	2.7	-0.4	-0.1	2.0	-0.3	0.1	2.2
Mountain	49	2.3	-0.4	-0.2	0.0	-0.1	1.2	2.2
Pacific	24	2.5	-0.2	0.2	1.0	-0.1	0.0	2.1
By Payment Classification:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Urban hospitals	2,050	2.9	0.0	0.0	-0.5	0.1	0.1	2.5
Rural areas	1,151	2.8	0.0	0.1	1.0	-0.2	0.1	2.5
Teaching Status:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Nonteaching	2,037	2.8	-0.2	0.0	0.0	0.1	0.1	2.2
Fewer than 100 residents	907	2.9	-0.1	0.0	0.1	0.0	0.2	2.5
100 or more residents	257	2.8	0.3	0.1	-0.1	-0.1	0.1	2.8
Urban DSH:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Non-DSH	505	2.8	-0.2	0.1	-0.4	-0.2	0.2	2.2
100 or more beds	1,290	2.9	0.0	-0.1	-0.5	0.2	0.1	2.5
Less than 100 beds	351	2.9	-0.3	-0.1	-0.5	0.2	0.2	2.1
Rural DSH:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SCH	259	2.4	-0.3	-0.1	0.1	-0.1	0.1	2.1
RRC	544	2.8	0.1	0.1	1.2	-0.2	0.1	2.6
100 or more beds	36	2.9	0.1	0.1	-0.2	-0.3	0.0	2.3
Less than 100 beds	216	2.7	-0.4	0.1	0.4	-0.1	0.2	2.2
Urban teaching and DSH:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Both teaching and DSH	739	2.9	0.1	0.0	-0.5	0.1	0.1	2.6
Teaching and no DSH	74	2.9	-0.1	0.1	-0.4	-0.2	0.1	2.4
No teaching and DSH	902	2.9	-0.1	-0.1	-0.4	0.4	0.1	2.3
No teaching and no DSH	335	2.8	-0.4	0.1	-0.6	-0.2	0.2	2.2
Special Hospital Types:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
RRC	483	2.9	0.1	0.1	1.2	-0.2	0.2	2.6
SCH	304	2.4	-0.2	-0.1	0.0	0.0	0.1	2.1
MDH	145	2.6	-0.4	0.0	-0.1	0.1	0.1	2.0

	Number of Hospitals ¹	Hospital Rate Update and Adjustment under MACRA (1) ²	FY 2021 Weights and DRG Changes with Application of Recalibration Budget Neutrality (2) ³	FY 2021 Wage Data with Application of Wage Budget Neutrality (3) ⁴	FY 2021 MGCRB Reclassifications (4) ⁵	Rural Floor with Application of National Rural Floor Budget Neutrality (5) ⁶	Application of the Frontier State Wage Index and Outmigration Adjustment (6) ⁷	All FY 2021 Changes (7) ⁸
SCH and RRC	149	2.5	-0.2	-0.1	0.3	-0.1	0.0	2.1
MDH and RRC	25	2.6	-0.3	0.0	0.6	-0.1	0.0	2.3
Type of Ownership:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Voluntary	1,885	2.8	0.0	0.0	0.0	0.0	0.1	2.5
Proprietary	827	2.9	-0.1	-0.1	0.0	0.0	0.1	2.4
Government	488	2.8	0.1	0.0	-0.2	0.0	0.0	2.5
Medicare Utilization as a Percent of Inpatient Days:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0-25	641	2.8	0.1	0.2	-0.5	-0.1	0.0	2.6
25-50	2,114	2.8	0.0	0.0	0.1	0.0	0.1	2.5
50-65	373	2.7	-0.2	0.0	0.4	0.4	0.2	2.2
Over 65	49	2.8	-0.7	-0.2	-0.9	-0.3	0.1	1.7
FY 2021 Reclassifications:	-	0.0	0.0	0.0	0.0	0.0	0.0	0.0
All Reclassified Hospitals	901	2.8	0.0	0.1	1.5	-0.2	0.1	2.6
Non-Reclassified Hospitals	2,300	2.8	0.0	-0.1	-0.9	0.1	0.1	2.4
Urban Hospitals Reclassified	722	2.8	0.0	0.1	1.3	-0.2	0.1	2.6
Urban Non-Reclassified Hospitals	1,752	2.9	0.0	-0.1	-1.0	0.1	0.1	2.4
Rural Hospitals Reclassified Full Year	309	2.6	-0.2	0.0	1.9	-0.2	0.1	2.2
Rural Non-Reclassified Hospitals Full Year	418	2.6	-0.3	0.0	-0.4	-0.2	0.2	2.1
All Section 401 Reclassified Hospitals	466	2.8	0.1	0.1	1.0	-0.2	0.1	2.6
Other Reclassified Hospitals (Section 1886(d)(8)(B))	54	2.7	-0.3	0.2	2.2	-0.3	0.0	2.1

- ¹ Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 2019, and hospital cost report data are from reporting periods beginning in FY 2018 and FY 2017.
- ² This column displays the payment impact of the hospital rate update and other adjustments, including the 2.4 percent update to the national standardized amount and the hospital-specific rate (the estimated 2.4 percent market basket update with the 0.0 percentage point multifactor productivity adjustment), and the 0.5 percentage point adjustment to the national standardized amount required under section 414 of the MACRA.
- ³ This column displays the payment impact of the changes to the Version 38 GROUPER, the changes to the relative weights and the recalibration of the MS-DRG weights based on FY 2019 MedPAR data in accordance with section 1886(d)(4)(C)(iii) of the Act. This column displays the application of the recalibration budget neutrality factor of 0.997975 in accordance with section 1886(d)(4)(C)(iii) of the Act.
- ⁴ This column displays the payment impact of the update to wage index data using FY 2017 cost report data and the OMB labor market area delineations based on 2010 Decennial Census data. This column displays the payment impact of the application of the wage budget neutrality factor, which is calculated separately from the recalibration budget neutrality factor, and is calculated in accordance with section 1886(d)(3)(E)(i) of the Act. The wage budget neutrality factor is 1.000447.
- ⁵ Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2021 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2021. Reclassification for prior years has no bearing on the payment impacts shown here. This column reflects the geographic reclassification budget neutrality factor of 0.986616.
- ⁶ This column displays the effects of the rural floor. The Affordable Care Act requires the rural floor budget neutrality adjustment to be a 100 percent national level adjustment. The rural floor budget neutrality factor applied to the wage index is 0.993446.
- ⁷ This column shows the combined impact of the policy required under section 10324 of the Affordable Care Act that hospitals located in frontier States have a wage index no less than 1.0 and of section 1886(d)(13) of the Act, as added by section 505 of Pub. L. 108-173, which provides for an increase in a hospital's wage index if a threshold percentage of residents of the county where the hospital is located commute to work at hospitals in counties with higher wage indexes. These are not budget neutral policies.
- ⁸ This column shows the estimated change in payments from FY 2020 to FY 2021 including an estimated decrease in outlier payments of 0.2 percent (from our current estimate of FY 2020 outlier payments of approximately 5.3 percent to 5.1 percent projected for FY 2021 based on the FY 2019 MedPAR data used for this final rule calculated for purposes of this impact analysis). This column also includes the effects of the adoption of the revised labor market area delineations in OMB Bulletin 18-04 and the effects of the transition to apply a 5-percent cap on any decrease in a hospital's wage index from the hospital's final wage index from the prior fiscal year.

- 5. On page 59070:
 - a. First column:
 - (1) Third full paragraph:
 - (a) Line 1, the reference, “section II.E.” is corrected to read “section II.D.”.
 - (b) Line 11, the section reference “II.G.” is corrected to read “II.E.”.
 - (2) Fourth full paragraph, line 6, the figure “0.99798” is corrected to read “0.997975”.
 - b. Third column, first full paragraph, line 26, the figure “1.000426” is corrected to read “1.000447”.
 - 6. On page 59071, lower half of the page:
 - a. First column, third full paragraph, line 6, the figure “0.986583” is corrected to read “0.986616”.
 - b. Second column, second full paragraph, line 5, the figure “0.993433” is corrected to read “0.993446”.
 - c. Third column, first partial paragraph, line 2, the figure “0.993433” is corrected to read “0.993446”.
 - 7. On page 59073 and 59074, the table titled “TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2021 ACUTE CARE HOSPITAL OPERATING PROSPECTIVE PAYMENT SYSTEM (PAYMENTS PER DISCHARGE)” is corrected to read as follows:
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**TABLE II.--IMPACT ANALYSIS OF CHANGES FOR FY 2021 ACUTE CARE
HOSPITAL OPERATING PROSPECTIVE PAYMENT SYSTEM
(PAYMENTS PER DISCHARGE)**

	Number of Hospitals (1)	Estimated Average FY 2020 Payment Per Discharge (2)	Estimated Average FY 2021 Payment Per Discharge (3)	FY 2021 Changes (4)
All Hospitals	3,201	13,494	13,829	2.5
By Geographic Location:				
Urban hospitals	2,462	13,865	14,213	2.5
Rural hospitals	739	10,053	10,269	2.2
Bed Size (Urban):				
0-99 beds	635	10,958	11,176	2
100-199 beds	756	11,334	11,612	2.4
200-299 beds	426	12,598	12,907	2.5
300-499 beds	422	13,914	14,252	2.4
500 or more beds	223	17,120	17,582	2.7
Bed Size (Rural):				
0-49 beds	312	8,847	9,020	2
50-99 beds	254	9,566	9,768	2.1
100-149 beds	95	9,871	10,087	2.2
150-199 beds	39	10,697	10,939	2.3
200 or more beds	39	11,560	11,819	2.3
Urban by Region:				
New England	112	14,860	15,264	2.7
Middle Atlantic	305	15,700	16,148	2.9
East North Central	381	13,004	13,325	2.5
West North Central	160	13,378	13,641	2
South Atlantic	402	12,319	12,627	2.5
East South Central	144	11,764	12,043	2.4
West South Central	364	12,948	13,267	2.5
Mountain	172	14,077	14,327	1.8
Pacific	372	17,290	17,760	2.7
Puerto Rico	50	11,902	12,122	1.9
Rural by Region:				
New England	19	13,953	14,292	2.4
Middle Atlantic	50	9,734	9,951	2.2
East North Central	114	10,344	10,569	2.2
West North Central	89	10,525	10,732	2
South Atlantic	114	9,449	9,633	1.9
East South Central	144	8,976	9,187	2.4
West South Central	136	8,764	8,954	2.2
Mountain	49	12,065	12,325	2.2
Pacific	24	13,562	13,853	2.1
By Payment Classification:				
Urban hospitals	2,050	13,490	13,826	2.5
Rural areas	1,151	13,502	13,836	2.5
Teaching Status:				
Nonteaching	2,037	10,953	11,198	2.2

	Number of Hospitals (1)	Estimated Average FY 2020 Payment Per Discharge (2)	Estimated Average FY 2021 Payment Per Discharge (3)	FY 2021 Changes (4)
Fewer than 100 residents	907	12,702	13,016	2.5
100 or more residents	257	19,663	20,204	2.8
Urban DSH:				
Non-DSH	505	11,498	11,750	2.2
100 or more beds	1,290	13,965	14,317	2.5
Less than 100 beds	351	10,158	10,367	2.1
Rural DSH:				
SCH	259	11,061	11,293	2.1
RRC	544	14,123	14,485	2.6
100 or more beds	36	13,473	13,785	2.3
Less than 100 beds	216	8,310	8,495	2.2
Urban teaching and DSH:				
Both teaching and DSH	739	15,169	15,562	2.6
Teaching and no DSH	74	12,368	12,670	2.4
No teaching and DSH	902	11,346	11,608	2.3
No teaching and no DSH	335	10,658	10,892	2.2
Special Hospital Types:				
RRC	483	14,208	14,575	2.6
SCH	304	11,995	12,250	2.1
MDH	145	9,086	9,272	2
SCH and RRC	149	12,353	12,616	2.1
MDH and RRC	25	10,426	10,666	2.3
Type of Ownership:				
Voluntary	1,885	13,536	13,874	2.5
Proprietary	827	11,834	12,118	2.4
Government	488	15,496	15,882	2.5
Medicare Utilization as a Percent of Inpatient Days:				
0-25	641	16,600	17,028	2.6
25-50	2,114	13,136	13,462	2.5
50-65	373	10,711	10,948	2.2
Over 65	49	7,899	8,035	1.7
FY 2021 Reclassifications by the Medicare Geographic Classification Review Board:				
All Reclassified Hospitals	901	13,544	13,899	2.6
Non-Reclassified Hospitals	2,300	13,465	13,788	2.4
Urban Hospitals Reclassified	722	14,256	14,633	2.6
Urban Nonreclassified Hospitals	1,752	13,611	13,940	2.4
Rural Hospitals Reclassified Full Year	309	10,230	10,454	2.2
Rural Nonreclassified Hospitals Full Year	418	9,786	9,991	2.1
All Section 401 Reclassified Hospitals:	466	14,740	15,117	2.6
Other Reclassified Hospitals (Section 1886(d)(8)(B))	54	9,430	9,628	2.1

8. On page 59074, bottom of the page, second column, last partial paragraph, line 1, the reference “section II.G.9.b.” is corrected to read “section II.F.9.b.”.

9. On page 59075:

a. First column:

(1) First full paragraph, line 1, the reference “section II.G.9.c.” is corrected to read “section II.F.9.c.”.

(2) Last partial paragraph:

(i) Line 1, the reference “section II.G.4.” is corrected to read “section II.F.4.”.

(ii) Line 11, the reference “section II.G.4.” is corrected to read “section II.F.4.”.

b. Third column:

(1) First full paragraph:

(i) Line 1, the reference “sections II.G.5. and 6.” is corrected to read “sections II.F.5. and 6.”.

(ii) Line 12, the reference “section II.H.6.” is corrected to read “section II.F.6.”.

(2) Last paragraph, line 1, the reference “section II.G.6.” is corrected to read “section II.F.6.”.

10. On page 59076, first column, first partial paragraph, lines 2 and 3, the reference “section II.G.9.c.” is corrected to read “section II.F.9.c.”.

11. On pages 59077 and 59078 the table titled “Modeled Uncompensated Care Payments for Estimated FY 2021 DSHs by Hospital Type: Uncompensated Care Payments (\$ in Millions)—from FY 2020 to FY 2021” is corrected to read as follows:

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Modeled Uncompensated Care Payments for Estimated FY 2021 DSHs by Hospital Type: Uncompensated Care Payments (\$ in Millions)* - from FY 2020 to FY 2021						
	Number of Estimated DSHs (1)	FY 2020 Final Rule Estimated Uncompensated Care Payments (\$ in millions) (2)	FY 2021 Final Rule Estimated Uncompensated Care Payments (\$ in millions) (3)	Dollar Difference: FY 2020 - FY 2021 (\$ in millions) (4)	Percent Change** (5)	
Total	2,389	\$8,351	\$8,290	-\$61	-0.73%	
By Geographic Location						
Urban Hospitals	1,911	7,826	7,803	-23	-0.29	
Large Urban Areas	991	4,793	4,829	36	0.75	
Other Urban Areas	920	3,033	2,974	-59	-1.94	
Rural Hospitals	478	525	487	-38	-7.19	
Bed Size (Urban)						
0 to 99 Beds	322	282	290	7	2.61	
100 to 249 Beds	830	1,920	1,900	-20	-1.05	
250+ Beds	759	5,624	5,614	-10	-0.18	
Bed Size (Rural)						
0 to 99 Beds	365	297	269	-28	-9.46	
100 to 249 Beds	100	180	167	-13	-7.44	
250+ Beds	13	48	52	4	7.64	
Urban by Region						
New England	93	251	227	-24	-9.51	
Middle Atlantic	235	1,055	983	-72	-6.87	
South Atlantic	316	824	864	40	4.81	
East North Central	100	381	405	23	6.09	
East South Central	312	1,973	2,027	54	2.74	
West North Central	127	495	498	3	0.53	
West South Central	244	1,701	1,637	-64	-3.77	
Mountain	126	373	333	-40	-10.64	
Pacific	317	663	723	60	9.02	
Puerto Rico	41	109	107	-2	-1.99	
Rural by Region						
New England	8	17	15	-2	-9.17	
Middle Atlantic	22	20	15	-5	-25.26	
South Atlantic	67	61	58	-3	-4.49	
East North Central	30	32	31	-2	-5.27	
East South Central	87	141	135	-6	-4.23	
West North Central	122	109	102	-6	-5.58	
West South Central	109	116	105	-11	-9.69	
Mountain	27	23	19	-4	-17.12	
Pacific	6	6	7	1	9.14	
By Payment Classification						
Urban Hospitals	1,574	6,098	6,109	11	0.18	
Large Urban Areas	874	3,956	4,001	45	1.15	
Other Urban Areas	700	2,142	2,108	-34	-1.60	
Rural Hospitals	815	2,253	2,181	-72	-3.18	
Teaching Status						
Nonteaching	1,387	2,469	2,444	-24	-0.99	
Fewer than 100 residents	748	2,872	2,848	-24	-0.83	
100 or more residents	254	3,010	2,998	-12	-0.41	
Type of Ownership						
Voluntary	1,436	4,557	4,556	-1	-0.03	
Proprietary	575	1,247	1,217	-30	-2.42	
Government	378	2,546	2,517	-29	-1.14	
Medicare Utilization Percent***						
0 to 25	548	3,399	3,387	-12	-0.37	

**Modeled Uncompensated Care Payments for Estimated FY 2021 DSHs by Hospital Type:
Uncompensated Care Payments (\$ in Millions)* - from FY 2020 to FY 2021**

	Number of Estimated DSHs (1)	FY 2020 Final Rule Estimated Uncompensated Care Payments (\$ in millions) (2)	FY 2021 Final Rule Estimated Uncompensated Care Payments (\$ in millions) (3)	Dollar Difference: FY 2020 - FY 2021 (\$ in millions) (4)	Percent Change** (5)
25 to 50	1,622	4,745	4,705	-40	-0.84
50 to 65	198	201	193	-8	-4.12
Greater than 65	20	5	6	0	0.80

BILLING CODE 4120-01-C

12. On pages 59078 and 59079 in the section titled "Effects of the Changes to Uncompensated Care Payments for FY 2021", the section's language (beginning with the phrase "Rural hospitals, in general, are projected to experience" and ending with the sentence "Hospitals with greater than 65 percent Medicare utilization are projected to receive an increase of 0.62 percent.") is corrected to read as follows: "Rural hospitals, in general, are projected to experience larger decreases in uncompensated care payments than their urban counterparts. Overall, rural hospitals are projected to receive a 7.19 percent decrease in uncompensated care payments, while urban hospitals are projected to receive a 0.29 percent decrease in uncompensated care payments. However, hospitals in large urban areas are projected to receive a 0.75 percent increase in uncompensated care payments and hospitals in other urban areas a 1.94 percent decrease.

By bed size, smaller rural hospitals are projected to receive the largest decreases in uncompensated care payments. Rural hospitals with 0-99 beds are projected to receive a 9.46 percent payment decrease, and rural hospitals with 100-249 beds are projected to receive a 7.44 percent decrease. These decreases for smaller rural hospitals are greater than the overall hospital average. However, larger rural hospitals with 250+ beds are projected to receive a 7.64 percent payment increase. In contrast, the smallest urban hospitals (0-99 beds) are

projected to receive an increase in uncompensated care payments of 2.61 percent, while urban hospitals with 100-249 beds are projected to receive a decrease of 1.05 percent, and larger urban hospitals with 250+ beds are projected to receive a 0.18 percent decrease in uncompensated care payments, which is less than the overall hospital average.

By region, rural hospitals are expected to receive larger than average decreases in uncompensated care payments in all Regions, except for rural hospitals in the Pacific Region, which are projected to receive an increase in uncompensated care payments of 9.14 percent. Urban hospitals are projected to receive a more varied range of payment changes. Urban hospitals in the New England, the Middle Atlantic, West South Central, and Mountain Regions, as well as urban hospitals in Puerto Rico, are projected to receive larger than average decreases in uncompensated care payments, while urban hospitals in the South Atlantic, East North Central, East South Central, West North Central, and Pacific Regions are projected to receive increases in uncompensated care payments.

By payment classification, hospitals in urban areas overall are expected to receive a 0.18 percent increase in uncompensated care payments, with hospitals in large urban areas expected to see an increase in uncompensated care payments of 1.15 percent, while hospitals in other urban areas are expected to receive a decrease of 1.60 percent. In contrast, hospitals in rural areas are projected to receive a decrease

in uncompensated care payments of 3.18 percent.

Nonteaching hospitals are projected to receive a payment decrease of 0.99 percent, teaching hospitals with fewer than 100 residents are projected to receive a payment decrease of 0.83 percent, and teaching hospitals with 100+ residents have a projected payment decrease of 0.41 percent. All of these decreases are consistent with the overall hospital average. Proprietary and government hospitals are projected to receive larger than average decreases of 2.42 and 1.14 percent respectively, while voluntary hospitals are expected to receive a payment decrease of 0.03 percent. Hospitals with less than 50 percent Medicare utilization are projected to receive decreases in uncompensated care payments consistent with the overall hospital average percent change, while hospitals with 50 to 65 percent Medicare utilization are projected to receive a larger than average decrease of 4.12 percent. Hospitals with greater than 65 percent Medicare utilization are projected to receive an increase of 0.80 percent."

13. On page 59085, lower half of the page, second column, last partial paragraph, line 20, the section reference "II.H." is corrected to read "IV.H."

14. On pages 59092 and 59093, the table titled "TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE [FY 2020 PAYMENTS COMPARED TO FINAL FY 2021 PAYMENTS] is corrected to read as:

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TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE
 [FY 2020 PAYMENTS COMPARED TO FINAL FY 2021 PAYMENTS]

	Number of hospitals	Average FY 2020 payments/case	Final Average FY 2021 payments/case	Change
All hospitals	3,201	976	979	0.3
By Geographic Location:				
Urban Hospitals	2,462	1,009	1,012	0.3
Rural areas	739	667	671	0.6
Bed Size (Urban)				
0-99 beds	635	813	814	0.1
100-199 beds	756	855	858	0.4
200-299 beds	426	932	935	0.3
300-499 beds	422	1,012	1,014	0.2
500 or more beds	223	1,211	1,215	0.3
Bed Size (Rural)				
0-49 beds	312	567	570	0.5
50-99 beds	254	622	624	0.3
100-149 beds	95	661	664	0.5
150-199 beds	39	725	731	0.8
200 or more beds	39	787	793	0.8
By Region:				
Urban by Region				
New England	112	1,090	1,101	1.0
Middle Atlantic	305	1,113	1,121	0.7
South Atlantic	402	887	886	-0.1
East North Central	381	962	962	0.0
East South Central	144	857	862	0.6
West North Central	160	995	992	-0.3
West South Central	364	923	929	0.7
Mountain	172	1,032	1,024	-0.8
Pacific	372	1,293	1,303	0.8
Rural by Region				
New England	19	928	935	0.8
Middle Atlantic	50	643	647	0.6
South Atlantic	114	620	620	0.0
East North Central	114	668	677	1.3
East South Central	144	626	629	0.5
West North Central	89	697	698	0.1
West South Central	136	597	599	0.3
Mountain	49	758	762	0.5
Pacific	24	862	872	1.2
By Payment Classification:				
Urban hospitals	2,050	998	1,005	0.7
Rural areas	1,151	933	929	-0.4
Teaching Status:				
Non-teaching	2,037	819	820	0.1
Fewer than 100 Residents	907	931	934	0.3

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE [FY 2020 PAYMENTS COMPARED TO FINAL FY 2021 PAYMENTS]				
	Number of hospitals	Average FY 2020 payments/case	Final Average FY 2021 payments/case	Change
100 or more Residents	257	1,349	1,356	0.5
Urban DSH:				
Non-DSH	505	901	902	0.1
100 or more beds	1,290	1,025	1,033	0.8
Less than 100 beds	351	739	741	0.3
Rural DSH:				
Sole Community (SCH/EACH)	259	687	690	0.4
Referral Center (RRC/EACH)	544	980	976	-0.4
100 or more beds	36	979	949	-3.1
Less than 100 beds	216	556	559	0.5
Urban teaching and DSH:				
Both teaching and DSH	739	1,092	1,102	0.9
Teaching and no DSH	74	951	957	0.6
No teaching and DSH	902	868	872	0.5
No teaching and no DSH	335	870	871	0.1
Special Hospital Types:				
Non special status hospitals	168	851	834	-2.0
RRC/EACH	483	1,010	1,005	-0.5
SCH/EACH	304	758	761	0.4
Medicare-dependent hospitals (MDH)	145	593	593	0.0
SCH, RRC and EACH	149	799	803	0.5
MDH, RRC and EACH	25	664	664	0.0
Type of Ownership:				
Voluntary	1,885	988	990	0.2
Proprietary	827	886	889	0.3
Government	488	1,029	1,034	0.5
Medicare Utilization as a Percent of Inpatient Days:				
0-25	641	1,115	1,119	0.4
25-50	2,114	966	969	0.3
50-65	373	794	796	0.3
Over 65	49	594	593	-0.2
2021 Reclassifications by the Medicare Classification Review Board:				
All Reclassified Hospitals	901	957	956	-0.1
All Nonreclassified Hospitals	2,300	987	992	0.5
Urban Hospitals Reclassified	722	1,013	1,010	-0.3
Urban Nonreclassified Hospitals	1,752	1,005	1,012	0.7
Rural Hospitals Reclassified Full Year	309	687	691	0.6
Rural Nonreclassified Hospitals Full Year	418	637	640	0.5
All Section 401 Reclassified Hospitals	466	1,030	1,022	-0.8
Other Reclassified Hospitals (Section 1886(d)(8)(B))	54	657	660	0.5

Wilma M. Robinson,

*Deputy Executive Secretary to the
Department, Department of Health and
Human Services.*

[FR Doc. 2020-26698 Filed 12-1-20; 4:15 pm]

BILLING CODE 4120-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
42 CFR Part 414
[CMS–5533–N2]
Medicare Program; Alternative Payment Model (APM) Incentive Payment Advisory for Clinicians—Request for Current Billing Information for Qualifying APM Participants—Update
AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Payment advisory.

SUMMARY: This advisory is to update the submission date listed in the previous **Federal Register** document published on September 17, 2020, titled “Medicare Program; Alternative Payment Model (APM) Incentive Payment Advisory for Clinicians—Request for Current Billing Information for Qualifying APM Participants” that provides information to certain clinicians who are Qualifying APM participants (QPs) and eligible to receive an Alternative Payment Model (APM) Incentive Payment that CMS does not have the current billing information needed to disburse the payment. This update allows these clinicians to provide information to CMS regarding their billing information by December 13, 2020 in order to receive this payment.

DATES: December 7, 2020.

FOR FURTHER INFORMATION CONTACT: Tanya Dorm, (410) 786–2216.

SUPPLEMENTARY INFORMATION:
I. Background

Under the Medicare Quality Payment Program, an eligible clinician who participates in an Advanced Alternative Payment Model (APM) and meets the applicable payment amount or patient count thresholds for a performance year is a Qualifying APM Participant (QP) for that year. An eligible clinician who is a QP for a year based on their performance in a QP Performance Period earns a 5 percent lump sum APM Incentive Payment that is paid in a payment year that occurs 2 years after the QP Performance Period. The amount of the APM Incentive Payment is equal to 5 percent of the estimated aggregate payments for covered professional services furnished by the QP during the calendar year immediately preceding the payment year.

II. Provisions of the Advisory

The Centers for Medicare & Medicaid Services (CMS) has identified those eligible clinicians who earned an APM Incentive Payment in CY 2020 based on their CY 2018 QP status.

When CMS disbursed the CY 2020 APM Incentive Payments, CMS was unable to verify current Medicare billing information for some QPs and was therefore unable to issue payment. In order to successfully disburse the APM Incentive Payment, CMS is requesting assistance in identifying current Medicare billing information for these QPs.

CMS has compiled a list of QPs we have identified as having unverified billing information. These QPs, and any others who anticipated receiving an APM Incentive Payment but have not, should follow the instructions to provide CMS with updated billing information at the following web address: <https://qpp-cm-prod-content.s3.amazonaws.com/uploads/1112/2020%20APM%20Incentive%20Payment%20Notice.pdf>.

On September 17, 2020, we published the Medicare Program; Alternative Payment Model (APM) Incentive Payment Advisory for Clinicians—Request for Current Billing Information for Qualifying APM Participants (85 FR 57980), where we announced that submissions would need to be received no later than November 13, 2020. In this updated advisory we are extending this deadline, and submissions would need to be received no later than December 13, 2020.

If you have any questions concerning submission of information through the website, please contact the QPP Help Desk at 1–866–288–8292.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Seema Verma, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: December 1, 2020.

Lynette Wilson,
Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2020–26776 Filed 12–4–20; 8:45 am]

BILLING CODE 4120–01–P
DEPARTMENT OF HEALTH AND HUMAN SERVICES
45 CFR Part 1
RIN 0991–AC17
Department of Health and Human Services Good Guidance Practices
AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services finalizes its proposed regulations governing the agency’s release and maintenance of guidance documents. These regulations will help to ensure that the public receives appropriate notice of new guidance and that the Department’s guidance does not impose obligations on regulated parties that are not already reflected in duly enacted statutes or regulations lawfully promulgated under them.

DATES: This final rule is effective January 6, 2021.

FOR FURTHER INFORMATION CONTACT: Brenna Jenny, Department of Health and Human Services, 200 Independence Avenue SW, Room 713F, Washington, DC 20201. Email: Good.Guidance@hhs.gov. Telephone: (202) 690–7741.

SUPPLEMENTARY INFORMATION:
I. Statutory and Regulatory Background

Subject to certain exceptions, the Administrative Procedure Act (“APA”), 5 U.S.C. 551 *et seq.*, mandates that rules imposing new obligations on regulated parties must go through notice-and-comment rulemaking. *See, e.g., Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979). This is true regardless of whether agencies frame these rules as sub-regulatory guidance. *See, e.g., Iowa League of Cities v. EPA*, 711 F.3d 844, 875 (8th Cir. 2013); *Gen. Elec. Co. v. EPA*, 290 F.3d 377, 385 (D.C. Cir. 2002). The APA’s procedural requirements sound in notions of good governance. *See, e.g., Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 741 (1996). Agencies can generally issue interpretive rules and statements of policy without conducting notice-and-comment rulemaking,¹ although such sub-regulatory guidance lacks the force and effect of law, and cannot bind regulated parties. *See, e.g., Shalala v. Guernsey Mem’l Hosp.*, 514 U.S. 87, 99 (1995).

To promote the appropriate issuance and use of guidance documents, and consistent with the requirements of Executive Order 13891, “Promoting the

¹ *But see Azar v. Allina Health Servs.*, 139 S. Ct. 1804 (2019).

Rule of Law Through Improved Agency Guidance Documents,” 84 FR 55,235 (Oct. 15, 2019), the United States Department of Health and Human Services (“HHS” or “the Department”) proposed regulations that set forth good guidance practices. This good guidance practices rule is one component of the Department’s broader regulatory reform initiative.² The final rule is designed to increase accountability, improve the fairness of guidance issued by the Department, guard against unlawful regulation through guidance, and safeguard the important principles underlying the United States administrative law system.

II. Provisions of the Proposed Rule and Analysis of and Response to Public Comments

In the August 20, 2020 **Federal Register** (85 FR 51,396), HHS published a proposed rule titled “Department of Health and Human Services Good Guidance Practices” (hereinafter, “Good Guidance Practices proposed rule”). In response to the publication of that proposed rule, HHS received 88 comments from industry trade organizations, patient advocacy groups, providers, health insurers, manufacturers, a law firm, and members of the public. HHS published a correction to this proposed rule on August 26, 2020 (85 FR 52,515) updating certain proposed effective dates. In the following sections of this final rule, HHS includes a summary of the provisions of the August 20, 2020 proposed rule, the public comments received, HHS’s responses to the comments, and any changes made to the regulatory text as a result.

Comment: Several commenters viewed the 30-day comment period (which began on August 17, 2020, the day that the **Federal Register** publicly displayed the proposed rule) as too short, and they requested a longer comment period.

Response: HHS respectfully disagrees with these commenters and continues to view a 30-day comment period as adequate for this notice of proposed rulemaking. The proposed rule, at only six pages in the **Federal Register**, is not lengthy. Neither the APA nor any other statute requires a longer comment period for the proposed rule. Instead, the APA merely requires that “[a]fter notice required by this section, the agency shall give interested persons an opportunity to participate in the rule

making through submission of written data, views, or arguments with or without opportunity for oral presentation.” This standard was met here. Indeed, the fact that the Department received 88 comments from a broad cross-section of interested parties, including many trade organizations representing numerous stakeholders, confirms that the public had ample time to participate in this rulemaking.

A. Scope (§ 1.1)

HHS proposed to add 45 CFR 1.1, stating that the requirements to be established pursuant to the proposed rule would apply to all guidance documents issued by all components of the Department, except for the Food and Drug Administration (“FDA”), which has its own good guidance practices regulations that the Secretary plans to amend to conform those regulations to the requirements of Executive Order 13891. FDA currently operates under a set of good guidance practices regulations, see 21 CFR 10.115, as required by the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 371(h), but no other division within HHS operates under a similar set of regulations.

Comment: One commenter urged HHS to amend FDA’s good guidance practices regulations to be consistent with the requirements in the proposed rule.

Response: HHS agrees. The Secretary still plans to amend FDA’s good guidance practices regulations, issued as required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(h), to conform to the requirements of Executive Order 13891. However, such amendments have not proceeded in parallel with the Department’s broader regulation. Accordingly, in order to avoid significant disparities between the rules around guidance that apply to FDA and the rest of the Department, this final rule clarifies that FDA must comply with all requirements implemented in this HHS Good Guidance Practices final rule—to the extent not already incorporated in the FDA good guidance practices regulations—until the Secretary issues a final rule amending FDA’s good guidance practices regulations. Primary provisions of this Good Guidance Practices final rule that are not already incorporated into FDA’s good guidance practices include, but are not limited to, the requirement that guidance documents issued after the effective date of this rule include a disclaimer clarifying that the contents do not have the force and effect of law (unless the

FDCA or other statute authorizes the issuance of binding guidance), as well as the information fields specified at 45 CFR 1.3(a)(3)(iii); the requirement that all significant guidance documents be issued only following a public notice and comment period (unless an exemption applies); that all guidance documents be included in the HHS guidance repository and if not, they will be considered rescinded; and that all FDA guidance documents shall be subject to the petition process at 45 CFR 1.5.

Comment: One commenter suggested that the final rule exempt Centers for Medicare & Medicaid Services (CMS) guidance documents from being within the rule’s scope, just as HHS had proposed to exempt FDA guidance documents from the scope of the rule.

Response: HHS declines to exempt CMS guidance documents from the scope of the Good Guidance Practices final rule. No division of the Department will be operating in a manner inconsistent with the important protections contained in this final rule. As HHS explained in the proposed rule, FDA has long operated under its own set of good guidance practices regulations, and as this final rule clarifies, FDA will be subject to the requirements of this Good Guidance Practices final rule until the Secretary amends FDA’s own good guidance practices regulations to conform to the requirements of Executive Order 13891.

HHS is finalizing the proposed scope of this rule but clarifying that until the Secretary amends FDA’s own good guidance practices regulations, FDA will be subject to the requirements in this Good Guidance Practices final rule. After the Secretary amends FDA’s good guidance practices regulations, this rule will, as proposed, apply to all guidance documents issued by HHS except for guidance documents issued by FDA.

B. Definitions (§ 1.2)

1. Guidance Document

HHS proposed that the HHS Good Guidance Practices regulations would apply to all guidance documents and proposed to define the term “guidance document” as any Department statement of general applicability which is intended to have future effect on the behavior of regulated parties and which sets forth a policy on a statutory, regulatory, or technical or scientific issue, or an interpretation of a statute or regulation. In the proposed rule, HHS explained that the contents of a transmission, rather than its format, dictates whether it would constitute a guidance document; guidance would

² See, e.g., HHS, FY 2020 Annual Performance Plan and Report—Regulatory Reform, <https://www.hhs.gov/about/budget/fy2020/performance/regulatory-reform/index.html>.

not need to be in the form of a formal written document to constitute a “guidance document.” The hallmark of guidance is that it includes statements of general applicability intended to govern the future behavior of regulated parties. Thus, HHS proposed that agency releases of technical or scientific information by itself would not constitute guidance unless the release also contains a policy on, or related to, technical or scientific information that is intended to affect the future behavior of regulated parties. However, HHS clarified that the Good Guidance Practices regulations would not require HHS to justify the quality of information; regulated parties and other stakeholders should use existing mechanisms to address the quality of information contained in documents issued by HHS.

Materials directed to government employees or agency contractors, rather than regulated parties, would also generally not constitute guidance within the meaning of this proposed rule. Similarly, most agency statements communicating news updates about the agency would not constitute guidance. Agency statements of specific applicability—such as advisory or legal opinions directed to particular parties about circumstance-specific questions; notices regarding particular locations, facilities, or products; and correspondence with individual persons or entities, including congressional correspondence or notices of violation—would also generally not be “guidance.”

HHS proposed that certain categories of documents would be excluded from the term guidance document: Rules promulgated pursuant to notice and comment under 5 U.S.C. 553 or similar statutory provisions; rules exempt from rulemaking requirements under 5 U.S.C. 553(a); rules of agency organization, procedure, or practice; decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions; internal guidance directed to the Department or other agencies that is not intended to have substantial future effect on the behavior of regulated parties; internal executive branch legal advice or legal opinions addressed to executive branch officials; legal briefs and other court filings; grant solicitations and awards; or contract solicitations and awards.

HHS proposed that whether a document would be exempt as a rule of agency organization, procedure, or practice is a functional test. Documents that are designed to shape the behavior of the Department would be exempt; documents designed to shape the behavior of regulated parties would be considered guidance if they also set

forth a policy on a statutory, regulatory, or technical or scientific issue, or an interpretation of a statute or regulation.

Pre-enforcement rulings, which are formal written communications applying the law to a specific set of facts (as opposed to making statements of general applicability) would also not constitute guidance documents under the proposed rule. Examples include letter rulings, advisory opinions directed to a specific party, and no-action letters. But material embedded within an advisory opinion or similar letter that otherwise satisfies the definition of “guidance document” would still be guidance for purposes of this rule. If a document addressed to specific individuals nonetheless contains a statement of general applicability setting forth a relevant policy or interpretation that is intended to have future effect by guiding the conduct of other regulated parties, then the document would be a guidance document.

Consistent with its existing responsibilities, HHS proposed that the HHS Office of the General Counsel (“OGC”), after discussing with senior officials within the Department, would make the legal determination of whether a document is excluded from the term “guidance document” and whether a purported guidance document is, in fact, a legislative rule that must go through notice-and-comment rulemaking. OGC would continue to determine whether certain guidance relating to Medicare should nonetheless go through notice-and-comment rulemaking as a result of the Supreme Court’s decision in *Azar v. Allina Health Services*, 139 S. Ct. 1804 (2019).

HHS received the following comments on the proposed definition of “guidance document.”

Comment: Several commenters thought that the definition of “guidance” as materials “intended to have future effect” was too vague and confusing because it would be difficult to determine the Department’s “intent” in its issuance of a document in order for affected parties to determine whether it is intended to govern the future behavior of regulated parties. Some commenters also noted that regulated parties may also rely on internal agency documents in guiding their future conduct, and thus these documents should not be exempt from being considered “guidance documents.” A small number of commenters suggested that rather than use the phrase “sets forth a policy,” the definition of guidance document should say “sets forth an expectation.”

Response: The phrase “intended to have future effect” is not a subjective test of an agency official’s thought processes, but rather, is an objective test to be applied when reviewing the face of a guidance document. For example, a document satisfies this standard when it provides information in a manner that can be reasonably interpreted as designed to encourage regulated entities to voluntarily take certain actions. This definition is consistent with the Office of Management and Budget’s (“OMB’s”) longstanding definition of guidance as “an agency statement of general applicability and future effect . . . that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue,” where “future effect” means the “intended . . . impacts due to voluntary compliance with a guidance document.” See OMB Bulletin 07–02, “Agency Good Guidance Practices,” 72 FR 3432, 3434–35 (Jan. 25, 2007). HHS has no basis for believing that regulated parties have found this definition confusing in the past and therefore is incorporating a very similar definition in this final rule. It believes that the phrase “sets forth an expectation” is captured by the phrase “intended to have future effect.” HHS agrees with the commenters who noted that internal agency documents can sometimes constitute guidance documents if they are designed to guide the conduct not just of agency officials, but also regulated parties, and it reiterates that whether a document is properly considered a “guidance document” under this rule is a functional test.

Comment: Several commenters thought that the definition of “guidance” was too vague and confusing, because categorization of a statement as guidance rests not on the format, but on the content of the communication, such that they believed that “guidance” could be contained “within nonguidance.” These commenters also asserted that the final rule should require OGC to publicly release its analyses of whether a document is a guidance document, “nonguidance document” or “nonguidance” within a guidance document. A few commenters stated that the definition of “guidance” is too vague because the proposed rule did not explain how the term “guidance document” will be defined in the context of Medicaid, CHIP, and other programs administered by CMS.

Response: HHS clarifies that guidance is not embedded in “nonguidance.” Rather, if a document that would generally fall outside of the definition of

guidance, e.g., a document of specific applicability, such as an advisory opinion, contains a statement of general applicability setting forth a relevant policy or interpretation that is intended to govern the future behavior of regulated parties—in other words, contains guidance—then the entire document would constitute a guidance document under this rule. As a result, there is no need to designate certain parts of documents as guidance and other parts “nonguidance.” See also 85 FR at 51,397 (“If a document addressed to specific individuals nonetheless contains a statement of general applicability setting forth a relevant policy or interpretation that is intended to have future effect by guiding the conduct of other regulated parties, then the document would be a guidance document.” (emphasis added)). With respect to the suggestion that HHS OGC publicly post its analysis of whether material constitutes “guidance,” HHS declines to incorporate this requirement. Whether material constitutes “guidance” is a legal question and as such, HHS OGC’s internal analyses of these questions will generally be privileged and confidential. Furthermore, HHS OGC does not have the resources to prepare formal written analyses of every single document that potentially constitutes guidance. If an interested party has a question about whether a document is properly considered guidance, the interested party could petition the agency under the process set forth in § 1.5, and HHS OGC will work with the relevant operating division to prepare a non-privileged public response.

HHS believes the proposed rule provided sufficient information about how the Department proposed to define the term “guidance document.” It was not feasible for HHS, in the proposed rule preamble, to specifically articulate how the term “guidance document” will be applied in each program implemented by HHS. Further, this proposed term builds on OMB’s longstanding definition of guidance document and OMB’s Final Bulletin on Agency Good Guidance Practices, to which HHS cited in the preamble to the proposed rule. See 85 FR at 51,396. This context, in combination with HHS’s own preamble discussion about the term, provided commenters with significant detail about the proposed definition.

Comment: A few commenters asked HHS to clarify the meaning of the term “regulated party” within the definition of “guidance document.” One commenter asked that HHS clarify that

“regulated parties” include States or state agencies.

Response: “Regulated party” is a broad term that covers any person or entity that is subject, or potentially subject, to the regulatory authority of any division of HHS. HHS agrees that States and state agencies can be “regulated parties” for purposes of this rule, such as in the context of guidance documents relating to the Medicaid program.

Comment: One commenter asked HHS to limit the definition of “guidance document” to written materials. This commenter also asked HHS to clarify that discussions of technical advisory groups are not “guidance.”

Response: HHS declines to limit the definition of “guidance document” to written materials. As we explained in the proposed rule, citing to OMB’s 2007 “Agency Good Guidance Practices” (72 FR 3432), the definition of “guidance document” encompasses all guidance materials, such as videos, in any format. HHS is reiterating that, consistent with the 2007 OMB Bulletin, the “definition of ‘guidance document’ encompasses all guidance materials, regardless of format.” *Id.* at 3434. Divisions of HHS commonly issue communications with regulated parties through website and blog entries and social media posts. Using such means of communicating with the public can offer benefits to HHS, including more effective outreach to interested parties; however, such electronic communications may often satisfy the definition of “guidance document,” and therefore would be subject to all of the requirements in this final rule, including that they cannot purport to impose binding new obligations on regulated entities. It would be arbitrary, and ultimately undermine the important procedural protections of this rule, if HHS were required to follow certain processes for written materials, but not to follow those same requirements for non-written or non-printed materials, even where they transmitted the same information to regulated parties. However, HHS agrees with the commenter that discussions of technical advisory groups do not constitute guidance because the statements are from members of the public and, thus, are not “agency statements.”

Comment: A few commenters asked HHS to clarify that guidance from HHS to agency contractors is “guidance” under the rule. Another commenter asked HHS to revise the rule to require its contractors to also be obligated to adhere to HHS good guidance practices.

Response: Materials sent from HHS to agency contractors, such as technical

directions, are generally not “guidance” under the rule, unless the content is designed to guide the conduct of regulated parties. Documents issued by HHS to agency contractors can be guidance documents if they include interpretive rules or policies that are of general applicability, particularly if they are also intended to serve a broader audience in addition to contractors, such as CMS Rulings. However, CMS Rulings, like all guidance documents, must still comply with procedural requirements imposed by the APA and Section 1871 of the Social Security Act.

Comment: Several commenters asked HHS to clarify whether particular types of documents are guidance documents, such as Paperwork Reduction Act materials, the Medicaid Managed Care Rate Development Guide, PDP Bid Instructions, guidance documents directed to Medicare Accrediting Organizations, the State Operations Manual, the PACE Manual, the Qualified Health Plan Issuer Application Instructions, the October 31, 2019 memorandum from OMB implementing Executive Order 13891 (“October 31, 2019 OMB Memo”), MLN Matters documents, Frequently Asked Questions (“FAQs”), documents issued by Medicare Administrative Contractors (“MACs”), OIG advisory opinions, and preambles to proposed and final regulations.

Response: This Rule does not affect HHS’s obligations under the Paperwork Reduction Act. The Paperwork Reduction Act requires that when an agency seeks to collect information from ten or more persons, 44 U.S.C. 3501, the agency must, subject to certain exceptions, submit the collection of information to OMB’s Office of Information and Regulatory Affairs (OIRA) for clearance and must publish the proposed information collection in the **Federal Register** for public comment. 44 U.S.C. 3506, 3507.

Whether a document containing a collection of information under the Paperwork Reduction Act is also “guidance” under this Rule, as opposed to a purely factual collection of information, depends on the content of the document. Similarly, we would evaluate Paperwork Reduction Act clearance documents and **Federal Register** notices based on their contents to assess whether they constitute guidance, although we do not expect that they would be guidance.

The Medicaid Managed Care Rate Development Guide, PDP Bid Instructions, guidance documents directed at Medicare Accrediting Organizations, the State Operations Manual, the PACE Manual, and the

Qualified Health Plan Issuer Application Instructions are all “guidance documents” within the meaning of this rule, because they set forth a policy on a statutory, regulatory, or technical or scientific issue, or an interpretation of a statute or regulation, and they are designed to have future effect on the behavior of regulated parties. HHS cannot opine on whether the October 31, 2019 OMB Implementing Memo is “guidance” under the HHS rule. That is because this final rule only applies to statements issued by HHS, and OMB, not HHS, issued that memorandum. MLN Matters documents and HHS-issued FAQs are the type of blog posts and web statements that will generally constitute guidance. Instructions from MACs are not “Department statements” and, thus, are not guidance documents. OIG advisory opinions are generally not considered guidance because they are designed to contain statements of specific, rather than general, applicability. Since the inception of the advisory opinion process, in accordance with Section 1128D(b)(4)(A) of the Social Security Act, OIG has taken the view that all advisory opinions issued under this statute are legally binding on the Department (including the OIG) and the requestor, but only with respect to the specific conduct of the particular requestor, and that no third parties are bound nor may they rely on an advisory opinion. HHS and OIG have concluded that the advisory opinions OIG has issued prior to the issuance of this final rule are not guidance. Preambles to proposed and final regulations are generally considered to be guidance, because they inform the interpretation of the text of a regulation. *See, e.g., Tex. Children’s Hosp. v. Azar*, 315 F. Supp. 3d 322, 334 (D.D.C. 2018);³ *but see Natural Res. Def. Council v. E.P.A.*, 559 F.3d 561, 564–65 (D.C. Cir. 2009) (“While preamble statements may in some unique cases constitute binding, final agency action susceptible to judicial review, this is not the norm.” (internal citation omitted)). We are finalizing the definition of “guidance document” as proposed.

³ As explained above, HHS is finalizing the proposed definition of “guidance repository,” which permits the primary guidance repository, at www.hhs.gov, to link to subsidiary guidance repositories. HHS will include a link to the **Federal Register** on the HHS guidance repository. Interpretive rules and policies in preambles to proposed and final HHS rules contained in the **Federal Register** will be considered guidance included in the guidance repository. HHS will not separately post preambles to the guidance repository.

2. Significant Guidance Document

In the proposed rule, HHS proposed to classify certain guidance documents as “significant guidance documents,” which HHS proposed to define as a guidance document that is likely to lead to an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles of Executive Order 12866, “Regulatory Planning and Review.” In the proposed rule, HHS explained that to calculate whether a guidance document is likely to have an annual effect on the economy of \$100 million or more, HHS would be required to assess the benefits, costs, or transfer impacts imposed by that guidance document; as part of this analysis, any benefit, cost or transfer occurring in any consecutive twelve-month period would be compared against the \$100 million threshold. Future cost savings would not be used to offset upfront costs. In performing these analyses, HHS further explained in the proposed rule that the Department would recognize that guidance documents are not legally binding and, therefore, not all regulated parties would necessarily conform their behavior to the recommendations set forth in the guidance, and furthermore, that the benefits, costs, and transfers may have been accounted for when HHS issued an underlying regulation, if any.

In the proposed rule, HHS explained that it anticipated that only a subset of guidance documents would satisfy the proposed rule’s definition of a significant guidance document. This is because to qualify as guidance, as opposed to a legislative rule, a document must reflect, implement, interpret, or describe a legal obligation imposed by a pre-existing, external source or advise the public prospectively of the manner in which the agency intends to exercise a discretionary power. It is HHS’s presumption that a guidance document that HHS deems significant is actually a legislative rule that must go through notice-and-comment rulemaking. HHS shall make all initial decisions as to whether a guidance document is

significant, and OMB shall make all final determinations. If a significance determination requires a legal conclusion regarding HHS’s governing statutes or regulations, however, OMB cannot reach legal conclusions on behalf of HHS.

HHS received the following comments on the proposed definition of “significant guidance document.”

Comment: Several commenters thought that the definition of “significant guidance” was confusing and unclear because it does not provide a clear explanation for how costs related to significant guidance would be calculated and provided no discussion of standards, methodologies, or other criteria to determine whether guidance is “significant.” One commenter specifically suggested that the test for inconsistencies with the planned actions of other agencies and the novel legal issues test be eliminated from the definition of “significant guidance,” because these tests would impose a burdensome cross-agency review of all sub-regulatory guidance. Other commenters supported the proposed definition of “significant guidance.”

Response: HHS appreciates the comments. The definition of “significant guidance” is modeled after the major-rule test from the Congressional Review Act. See 5 U.S.C. 804(2). For example, to determine whether guidance is significant because it will likely result in an annual effect on the economy of \$100 million or more, HHS will use the well-established test for making that same determination under the Congressional Review Act, as noted in the proposed rule. The other criteria for determining whether guidance is significant are also specified in the proposed rule, and some of these criteria also have some overlap with the Congressional Review Act’s definition of major rule. Specifically, guidance is significant if it adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles of Executive Order 12866, “Regulatory Planning and Review.” HHS believes the Department has discretion in assessing these factors and that these types of assessments are well

within the Department's expertise to make. HHS respectfully disagrees that the criteria relating to novel legal issues or the planned actions of other agencies would require a cross-agency review of all sub-regulatory guidance. OMB—which has an excellent overview of guidance and regulatory issues across all agencies—will make all final decisions on the significant guidance determination and will help identify guidance documents that could trigger this criterion. If an interested party believes that the Department has incorrectly categorized a guidance document as non-significant, the interested party may utilize the petition process set forth at § 1.5.

Comment: Several commenters asserted that the proposed definitions of “guidance document” and “significant guidance” provided insufficient information to allow for effective comment.

Response: HHS respectfully disagrees with these comments. HHS received a diverse set of comments on various aspects of the proposed definitions of “guidance document” and “significant guidance document,” as summarized above and below, which confirms that the Department provided the public with sufficient information about its proposals to permit comment on the proposed definitions. *See Nuvio Corp. v. FCC*, 473 F.3d 302, 310 (D.C. Cir. 2006) (citing comments received as evidence that notice of proposed rulemaking “gave interested parties a reasonable opportunity . . . to present relevant information on the central issues”); *see also, e.g., Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 952 (D.C. Cir. 2004); *Appalachian Power Co. v. EPA*, 135 F.3d 791, 816 (D.C. Cir. 1998) (per curiam); *Stringfellow Mem'l Hosp. v. Azar*, 317 F. Supp. 3d 168, 187 (D.D.C. 2018).

Comment: One commenter suggested that HHS expand the definition of “significant guidance” to include any guidance that sets forth an initial interpretation of a statutory or regulatory requirement or changes such an interpretation. Another commenter suggested that HHS expand the definition of “significant guidance” to include any guidance that requires states to revise their statutes or regulations.

Response: HHS appreciates the first commenter's suggestion. However, HHS believes this would significantly expand the set of documents categorized as “significant guidance” and may prove unworkable. HHS will consider potentially expanding the category of significant documents in the future, as the Department gains more experience

implementing this final rule. HHS also declines to include within “significant guidance” any instructions that require states to revise their statutes or regulations. Guidance documents cannot impose new binding obligations on any entity. As a result, if a document purported newly to require states to revise a statute or regulation, such a purported instruction could not, by definition, be guidance. Guidance documents may, however, restate and discuss binding statutory or regulatory requirements, but should, when doing so, provide the citation for the applicable statutory or regulatory requirement.

Comment: Several commenters concluded that any document categorized as “significant” is in fact a legislative rule that must go through the APA notice-and-comment rulemaking process. Another commenter expressed concern that significant guidance will be viewed as permissibly being able to impose binding new obligations on regulated parties.

Response: HHS appreciates the commenters' concerns. As explained in the preamble to the proposed rule, HHS expects significant guidance documents to be relatively few, because as these commenters note, many issuances satisfying one of the significant guidance document criteria may also impose binding new obligations and as such, are legislative rules that must go through the APA's notice-and-comment rulemaking process. Interested parties who believe that HHS has incorrectly classified a legislative rule as a significant guidance document may utilize the petition process set forth in § 1.5.

HHS disagrees that significant guidance documents will be viewed as authorized to impose binding new obligations on regulated parties. These guidance documents, like all other guidance documents, will be posted to the HHS guidance repository, which will carry a disclaimer reiterating that all documents contained therein do not impose any new binding obligations unless authorized by law to do so. In addition, any significant guidance documents issued after this rule is finalized will generally include on their face the disclaimer set forth at § 1.3, which reiterates that such documents “do not have the force and effect of law and are not meant to bind the public in any way.”

HHS finalizes the definition of “significant guidance” as proposed.

3. Issued

In the proposed rule, HHS defined “issued” to mean a distribution of

information to the public that HHS initiated or sponsored. However, HHS clarified that if a document directed solely to Department employees must be made publicly available under law or agency disclosure policies, for example posted on an agency website as the result of multiple requests under the Freedom of Information Act, the document would not be considered to be issued.

HHS received one comment on the definition of “issued”:

Comment: A commenter expressed concern that the proposed definition of “issued” excluded documents directed solely to government employees or agency contractors, explaining that CMS and others have attempted to use instructions to contractors to impose binding requirements on Medicare Advantage plans through audit and other enforcement activities.

Response: As HHS explained in the proposed rule, whether something is a guidance document is a functional test. Documents ostensibly directed at government employees or agency contractors but that are designed to, or are used to, shape the behavior of regulated parties will be considered guidance if they also set forth a policy on a statutory, regulatory, or technical or scientific issue, or an interpretation of a statute or regulation.

HHS is finalizing the definition of “issued” as proposed.

4. Guidance Repository

HHS proposed to define “guidance repository” to mean an online electronic database containing or linking to guidance documents, and proposed that the Department's primary guidance repository could link to subsidiary guidance repositories.

Comment: One commenter asked HHS to clarify that the online electronic database would be publicly available and free to access.

Response: HHS clarifies that by “online,” the final rule refers to a publicly available internet portal that is not behind a paywall.

Comment: A few commenters commended FDA's pre-existing guidance website for its functionality and utility and expressed a desire for the HHS guidance repository to become more user-friendly.

Response: HHS is glad that regulated parties have found FDA's guidance website to be useful. We note that FDA's guidance website has been operational for far longer than the HHS guidance repository, and HHS will consider incorporating additional functionality elements in the future, as the

Department gains more experience with administering the guidance repository.

HHS finalizes the definition of “guidance repository” as proposed.

C. Requirements for Department Issuance and Use of Guidance Documents (§ 1.3)

In the proposed rule, HHS proposed that, unless otherwise authorized by statute, HHS may not issue any guidance document that establishes legal obligations not reflected in duly enacted statutes or regulations lawfully promulgated under them, and may not use any guidance document for purposes of requiring persons or entities outside HHS to take any action or to refrain from taking any action beyond what is already required by the terms of an applicable statute or regulation. HHS explained that this is an existing legal obligation but that the Department proposed to codify this requirement in order to ensure consistent compliance with these important legal principles.

HHS also proposed a process for issuing guidance that would formalize guardrails designed to ensure that guidance documents are appropriately issued and used. HHS proposed that after November 16, 2020, each guidance document issued by HHS, or any of its components, would be required specifically to state that it is a “guidance” document and use the following language, unless the guidance is authorized by law to be binding: “The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.” HHS proposed that no guidance document issued by HHS would be able to direct parties outside the federal government to take or refrain from taking action, except when restating—with citations to statutes, regulations, or binding judicial precedent—mandates contained in a statute or regulation.

In the proposed rule, HHS also proposed to require that each guidance document issued by HHS or any component of HHS after November 16, 2020, must also include the following information: (1) The activities to which, and the persons to whom, the guidance applies; (2) the date HHS issued the guidance document; (3) a unique agency identifier; (4) a statement indicating whether the guidance document replaces or revises a previously issued guidance document and, if so, identifying the guidance document that it replaces or revises; (5) a citation to the

statutory provision(s) and/or regulation(s) (in Code of Federal Regulations format) that the guidance document is interpreting or applying; and (6) a short summary of the subject matter covered in the guidance document. For guidance documents issued before November 16, 2020, HHS proposed that the Department would not retrospectively revise those guidance documents to include the information listed in this paragraph. HHS further clarified that any guidance document issued in conjunction with one or more other agencies would nonetheless be required to comply with all requirements that would be applicable if the guidance document were issued solely by HHS.

HHS proposed to apply additional procedures to significant guidance documents. HHS would submit all significant guidance documents to OIRA for review under Executive Order 12866 prior to issuance. Significant guidance documents would be required to comply with applicable requirements for significant regulatory actions, as set forth in executive orders, except that only economically significant guidance documents would require a separate Regulatory Impact Analysis. The Secretary, on a non-delegable basis, would have to approve any significant guidance document before the Department issues it. HHS specifically requested comments as to whether the Secretary should instead have the limited authority to delegate approval of guidance documents to the Deputy Secretary, and whether the Secretary should be required to approve certain non-significant guidance documents prior to publication.

HHS proposed that, prior to issuing any significant guidance document, HHS must offer a public notice and comment period of at least 30 days. HHS would be required to publish a public notice in both the **Federal Register** and the guidance repository. This notice would list the end of the comment period, provide information about where the public may access a copy of the proposed significant guidance document, and include how written comments may be submitted on the proposed significant guidance document and an internet website where those comments may be reviewed by the public. When issuing the significant guidance document, HHS would be required to review all comments received and publish an easily accessible public response to major concerns raised. *Cf., e.g., New Lifecare Hosps. of Chester Cty. LLC v. Azar*, 417 F. Supp. 3d 31, 43–44 (D.D.C. 2019) (discussing APA standard for

agency responses to public comments during notice-and-comment rulemaking).

Under the proposed rule, HHS could elect not to conduct a comment period if it were to find that notice and public comment are impracticable, unnecessary, or contrary to the public interest. The Secretary, as the individual approving the significant guidance document, would be required to make this finding, and the significant guidance document would have to incorporate the finding and a brief statement of reasons in support of such finding. In addition, a significant guidance document could be exempted from any other requirement otherwise applicable to significant guidance documents if the Secretary of HHS and the Administrator of OIRA were to agree that exigency, safety, health, or other compelling cause warrants the exemption.

HHS also proposed that it would seek from OIRA, as appropriate, categorical determinations that classes of guidance presumptively do not qualify as significant. Any guidance satisfying such a categorical exemption presumptively need not comply with the requirements of § 1.3(b) but would need to comply with all other requirements applicable to guidance documents. OIRA may request to review guidance documents within a categorical exemption and may nonetheless conclude that a guidance document that is presumptively not significant is in fact significant.

HHS received the following comments on the proposed process for issuing guidance documents:

Comment: Several commenters stated that the APA exempts guidance documents from the notice-and-comment requirements of 5 U.S.C. 553, and that the Congressional Review Act, 5 U.S.C. Sections 801–808, also does not require guidance to go through notice and comment procedures. They assert that HHS fails to explain the statutory basis authorizing it to apply notice and comment requirements to guidance documents.

Response: The APA requires that agencies must publish notice of a proposed rulemaking and give the public the opportunity to participate, usually by submitting comments, prior to issuing the rule. *See* 5 U.S.C. 553(b). Subsection 553(b) exempts interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice from the notice and comment requirement, unless otherwise required by statute. However, it does not prohibit agencies from using additional

procedures for rules that would otherwise be exempt from notice and comment procedures. The Supreme Court has recognized that the APA provides a statutory floor, not a ceiling, on the administrative procedures an agency may choose to adopt when promulgating legislative rules or issuing guidance. See *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (“Agencies are free to grant additional procedural rights in the exercise of their discretion . . .”).

HHS has previously adopted procedures above the APA floor. In 1971, then-Health Education and Welfare Secretary Richardson announced that, despite the exemption in the APA, the department would no longer consider matters relating to public property, loans, grants, benefits, and contracts exempt from notice and comment rulemaking (36 FR 2532 (Feb. 5, 1971)), and the courts have enforced the requirement that these programs use notice and comment rulemaking ever since. See, e.g., *Humana of S.C. v. Califano*, 590 F.2d 1070, 1084 (D.C. Cir. 1978) (discussing waiver of benefit exemption and application of mandatory rulemaking procedures). See generally *Service v. Dulles*, 354 U.S. 363, 388 (1957) (where agency had adopted regulations governing decision committed to the Secretary’s discretion by statute, failure to apply agency regulations was illegal).

Similarly, nothing in the Congressional Review Act precludes the adoption of additional procedures for guidance documents, nor does using these procedures affect whether any particular guidance is also a rule subject to the Congressional Review Act.

The requirements within this final rule are well within the authority provided by the APA and the Congressional Review Act. HHS does not need additional statutory authority to provide notice and solicit public comments on significant guidance documents, or to apply any of the other procedures implemented by this final rule.

Comment: Several commenters noted that the Congressional Review Act requires agencies to submit certain guidance documents to Congress, even if they are exempt from notice and comment rulemaking. The commenters expressed concern that the proposed rule did not mention these requirements and did not explicitly discuss congressional review of significant guidance.

Response: The Congressional Review Act requires agencies to give Congress notice whenever they issue rules, 5

U.S.C. 801(a)(1)(A), which the Congressional Review Act defines to include interpretive rules and policy statements if they are “designed to implement, interpret, or prescribe law or policy,” 5 U.S.C. 551, as incorporated by 5 U.S.C. 804(3). The Congressional Review Act authorizes OIRA to make a determination whether a rule is a “major rule” under the Congressional Review Act. 5 U.S.C. 804(2). For rules determined by OIRA to be “major rules,” agencies must generally provide advance notice to Congress. 5 U.S.C. 801(a)(3). Section 1.2 of this final rule incorporates and extends the major rule test from the Congressional Review Act in the definition of “significant guidance.” Section 1.3(b)(2)(i) of the final rule requires the Department to submit significant guidance to OIRA for review. To the extent that a guidance document is also a “rule” subject to the Congressional Review Act, this final rule does not purport to change or modify the Congressional Review Act’s requirements for Congressional notification.

Comment: Several commenters pointed to what they perceived to be important questions left open by the proposed rule, such as whether HHS has an obligation to consider and respond to comments and how stakeholder input would be considered or integrated into proposed significant guidance.

Response: As HHS explained in the preamble to the final rule, HHS does have an obligation to consider all comments and to respond not to each individual comment, but rather to all major concerns raised. See 85 FR at 51,398 (“HHS would be required to review all comments received and publish an easily accessible public response to major concerns raised.”). This is a familiar standard for the Department and commenters. Cf. *Env’tl. Def. Fund v. E.P.A.*, 922 F.3d 446, 458 (D.C. Cir. 2019) (describing obligation under the APA to respond to major substantive comments during notice-and-comment rulemaking). Accordingly, HHS clarifies that the Department will consider comments timely submitted during a comment period and, as appropriate, modify a significant guidance document based upon stakeholder feedback in a manner similar to the process the Department uses for reviewing and incorporating feedback during the APA notice-and-comment rulemaking process.

Comment: Several commenters asked whether significant guidance issued through a notice-and-comment process could be rescinded without notice and comment.

Response: HHS will not use a notice-and-comment process for rescinding significant guidance documents. As the proposed rule explained, significant guidance documents are a subset of guidance documents, and the Department can rescind a guidance document by not posting it, or not maintaining its posting, on the HHS guidance repository. With the limited exception of certain Medicare guidance for which notice-and-comment rulemaking is required under Section 1871 of the Social Security Act, the Department is under no obligation to rescind significant guidance documents through a notice-and-comment process simply because the Department elected to apply such a process to the issuance of the significant guidance document. See *Vermont Yankee*, 435 U.S. at 524, 543–44; *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101 (2015). HHS notes that if, after the effective date of this final rule, rescinded guidance is replaced by a new guidance document, the replacement guidance must contain a reference to the rescinded guidance, and, if significant, the replacement guidance would itself be subject to notice and comment.

Comment: A few commenters expressed concern that the proposed notice-and-comment process for significant guidance documents would be too cumbersome, and it would inhibit the Department’s ability to timely issue significant guidance documents, particularly in circumstances such as during public health emergencies. Other commenters expressed strong support for the proposed notice-and-comment process, indicating that they welcomed the opportunity to participate in the development of significant guidance documents. Some of these commenters suggested that the Department should offer a longer comment period, such as 60 days instead of 30 days, in order to ensure robust public participation. Other commenters expressed support for the proposed exceptions to the notice-and-comment process, under which HHS could elect not to conduct a comment period if it were to find that notice and public comment are impracticable, unnecessary, or contrary to the public interest. Some of these commenters asked HHS to provide specific examples of when the Secretary might invoke this exceptions process. A couple of commenters recommended that HHS implement a process for soliciting public feedback about whether a guidance document is significant.

Response: HHS appreciates the comments and agrees that the benefits of

receiving stakeholder input on significant guidance documents generally outweigh any administrative costs or incremental delays. A 30-day comment period generally strikes the right balance between competing needs, namely, the Department's interest in promptly issuing significant guidance and the public's interest in having sufficient time to offer thorough feedback. Nonetheless, HHS also agrees with the commenters who voiced support for the exceptions process. HHS plans to use this exceptions process when needed, as the Department acknowledges that certain circumstances, such as public health emergencies, may make it appropriate to invoke this exceptions process.

HHS does not plan to solicit public feedback as to whether a guidance document is significant. First, this would further lengthen the process of issuing a significant guidance document, which may make it more difficult for the Department to timely issue relevant guidance. HHS also believes that the criteria for a guidance document being "significant" require an assessment of factors that lie within the unique expertise of the Department and OMB. And finally, as indicated in the preamble to the proposed rule, OMB will make all final determinations as to whether a guidance document is significant. If HHS concludes in the future that public feedback on any question relating to significant guidance would be helpful, HHS may issue a Request for Information.

Comment: A couple commenters suggested specific documents that HHS should work with OMB to categorize as presumptively exempt from being considered significant guidance, and furthermore, that HHS provide a notice and comment process for categories of documents that are being contemplated for exemption.

Response: HHS will consider seeking public feedback through a future request for information as to categories of documents that should qualify for an exemption. OMB will make final determinations as to the categories of documents that are considered presumptively exempt.

Comment: Several commenters claimed that the proposed rule failed to address joint guidance issued by multiple agencies. Other commenters asked HHS to carefully coordinate with other agencies when jointly issuing guidance, in order to avoid legal and operational challenges for regulated parties.

Response: HHS respectfully disagrees that the proposed rule did not address guidance jointly issued by multiple

agencies. In the preamble to the proposed rule, HHS stated, "Any guidance issued in conjunction with one or more other agencies would nonetheless be required to comply with all requirements that would be applicable if the guidance document were issued solely by HHS." 85 FR at 51,398. HHS agrees that coordination with other agencies when jointly issuing guidance will be important. HHS has significant experience, in particular working with the Department of Labor, the Department of Agriculture, and the Department of the Treasury, on jointly issued guidance. HHS will continue to work closely with other agencies when issuing guidance to minimize any procedural complications that could affect regulated parties.

Comment: Several commenters criticized the disclaimer HHS proposed to apply to all guidance documents issued after the final rule. These commenters stated that the disclaimer's statement that each guidance document "has no legal effect" has the potential to be confusing to regulated entities and members of the public. This is because, for example, regulated entities may believe they can ignore HHS guidance documents and substitute their own interpretations of regulations in place of the Department's interpretations. One commenter stated that the disclaimer is confusing because it is not clear whether regulated parties will need to conduct their own legal analysis to determine whether a guidance document is "authorized by law." A few commenters asked whether significant guidance documents must include the disclaimer, and how HHS plans to incorporate the disclaimer into non-written guidance materials such as video clips or make them searchable. Other commenters expressed strong support for the disclaimer requirement. Two commenters, while expressing support for the disclaimer, suggested that HHS should modify the proposed text, because they believe that the second sentence of the proposed disclaimer appears to suggest that guidance documents are binding because they purport to provide clarity regarding existing requirements under the law.

Response: The proposed disclaimer is correct as a matter of law and is unlikely to be confusing. As a result of the notice, the public and regulated entities will have greater clarity about the role and implications of guidance documents when they are informed through the disclaimer that guidance documents cannot impose binding legal obligations above and beyond such legal obligations that are imposed by statute

or regulation. Because the APA forbids agencies from imposing binding obligations on regulated parties through sub-regulatory guidance, unless authorized by law, regulated parties have always been free to choose not to adhere to interpretive rules set forth in guidance documents. However, they do so at their own risk, because guidance documents often provide important insight into how HHS interprets, and applies, its statutes and regulations. Regulated parties that take actions inconsistent with HHS's interpretive statements in guidance documents may be violating underlying statutory or regulatory obligations. HHS clarifies that regulated parties do not need to undertake their own legal analyses to determine whether any provision of law authorizes binding guidance documents: If a provision of law does authorize HHS to issue binding guidance documents, then the guidance document will not include the disclaimer stating that it lacks the force and effect of law. See § 1.3(a)(3)(i) of the final rule, stating that guidance documents must include the specified disclaimer, "unless the guidance is authorized by law to be binding."

HHS does not believe that the second sentence in the proposed disclaimer text ("This document is intended only to provide clarity to the public regarding existing requirements under the law.") suggests that guidance documents are binding. The first sentence clearly states that the contents of the document "do not have the force and effect of law." Thus, the "existing requirements under the law" must arise from other sources that do have the force and effect of law, namely, validly enacted statutes and regulations.

HHS clarifies that significant guidance documents must include the proposed disclaimer. All guidance documents issued after the final rule's effective date must include the disclaimer, and significant guidance documents are a subset of guidance documents. HHS will also include this disclaimer on non-written forms of guidance documents, such as videos. HHS will do so in a format appropriate to the medium, for example, in a guidance video, HHS might include an audio voiceover or a textual statement. If an operating division issues a non-written guidance document, the operating division is also responsible for creating a searchable transcript of that non-written guidance document and uploading it to the guidance repository.

Comment: A couple of commenters expressed the concern that this Good Guidance Practices rule will inhibit informal agency communications with

regulated parties, such as CMS stakeholder engagement calls.

Response: HHS does not intend for this rule to adversely impact informal agency communications with regulated parties. Many of these communications do not constitute guidance, because they involve the application of laws to a regulated party's specific factual circumstances. However, where an HHS operating division provides information that satisfies the definition of "guidance document," HHS expects that information also to be posted to the guidance repository. This will ultimately inure to the benefit of regulated parties, because a broader set of entities will now have access to the guidance.

Comment: One commenter opposed the proposed additional rules relating to the issuance and use of guidance documents, explaining that it had not seen a pattern of overreach by HHS, through its guidance documents, that would justify the additional proposed rules.

Response: The rule is not being promulgated as a remedy for overreach. HHS believes that the Good Guidance Practices rule will improve its guidance practices and help to ensure that it acts in a fair, transparent, and lawful manner.

Comment: Commenters generally expressed support for the inclusion of the proposed six categories of information on all guidance documents issued after the final rule. Some commenters suggested that HHS should include these six information categories on all guidance documents, even those issued before the implementation date of the final rule. Some commenters also suggested that HHS also add to the required categories of information the effective date of the guidance document, and furthermore, that HHS make guidance documents effective only after a reasonable implementation period.

Response: HHS appreciates the commenters' support. Unfortunately, HHS does not currently have the resources to add the six categories of information to all of the thousands of guidance documents in the guidance repository that were issued before the effective date of this final rule. Accordingly, HHS finalizes its proposal to only apply this requirement prospectively, to guidance documents issued after the effective date of this final rule.

HHS also finalizes the set of six categories of information, without adding any additional information fields, such as the guidance document's effective date. Generally, a guidance document will be effective as of the date

it is issued, which is one of the six information categories that must be included in all guidance documents issued after this final rule's effective date. If a guidance document has a different effective date, HHS expects the issuing operating division will make that clear in the guidance document. HHS always strives to issue guidance documents in a timely manner, so that regulated parties can take HHS's views into account, but it believes that imposing a particular delay in effective date for guidance documents is outside the scope of the proposed rule. Nonetheless, HHS does not believe that issuing such a requirement in future rulemaking is necessary, given that guidance documents cannot impose binding new obligations.

Comment: A few commenters expressed concern as to the statement in the proposed disclaimer that guidance documents "are not meant to bind the public in any way, unless specifically incorporated into a contract." A couple of these commenters explained that many federal healthcare programs involve mandatory contracts with CMS, and CMS often includes in these contracts a general covenant to abide by all sub-regulatory guidance that CMS has issued in the past or may issue in the future. Another commenter requested that HHS modify this portion of the disclaimer to clarify that it only applies to a legally enforceable contract, rather than an opt-in agreement that simply memorializes a party's decision to participate in a certain program and abide by the program's laws and regulations.

Response: HHS agrees that so-called "catchall" clauses that generically purport to bind the signatory to all guidance ever issued by the Department do not fall within this exception, because the guidance materials are not "specifically" incorporated into the contract. If the government intends for a guidance document incorporated into a contract by reference to have independent legal basis, the government must make that intention clear through unambiguous language. For example, if a contract states that Medicare Advantage organizations must operate "in compliance with the requirements of this contract and applicable Federal statutes, regulations, and policies (e.g., policies as described in the Call Letter, Medicare Managed Care Manual, etc.)," the signatory must comply with CMS call letters and the Medicare Managed Care Manual, because these sub-regulatory materials are specifically referenced in the contract. However, the contract does not make compliance with any other sub-regulatory guidance

issued by HHS legally binding. This narrow exception applies to the same extent to contracts categorized as opt-in agreements. HHS also clarifies that grants are analogous to contracts for purposes of this rule and the Department can accordingly also render guidance documents binding on grantees by specifically incorporating them into the grant agreement.

Comment: Several commenters asked HHS to clarify the intersection between the Good Guidance Practices rule and the Department's obligations under Social Security Act Section 1871, as interpreted by the Supreme Court in *Allina Health Services*. One commenter suggested that the Department amend proposed § 1.3(a)(1) expressly to acknowledge the Supreme Court's decision in *Allina Health Services*. This commenter also noted that Section 1871 of the Social Security Act further imposes requirements on HHS that the Department is currently not satisfying, namely, to "publish in the **Federal Register**, not less frequently than every 3 months, a list of all manual instructions, interpretative rules, statements of policy, and guidelines of general applicability which—(A) are promulgated to carry out this subchapter, but (B) are not published pursuant to subsection (a)(1) and have not been previously published in a list under this subsection." See 42 U.S.C. 1395hh(c)(1) (Section 1871(c)(1) of the Social Security Act).

Response: In the preamble to the proposed rule, HHS noted that "OGC would continue to determine whether the contents of certain guidance relating to Medicare" must go through notice-and-comment as a result of the Supreme Court's decision in *Allina Health Services*, but that "[s]uch guidance documents would still need to meet all applicable requirements" of the Good Guidance Practices rule. 85 FR at 51,397. HHS clarifies that some substantive legal standards otherwise qualifying as "guidance documents" under this rule may also be subject to notice-and-comment obligations imposed by Section 1871. If so, the substantive legal standards must comply both with the obligations imposed by Section 1871 and the requirements in this final rule. Thus, for example, following publication in proposed and final rules, consistent with Section 1871, HHS would post the guidance document to the guidance repository.

HHS believes § 1.3(a)(1) accurately describes its obligations under Section 1871 and the APA as proposed, and declines to amend it. Section 1.3(a)(1) states, "Under the Administrative Procedure Act, the Department may not

issue any guidance document that establishes a legal obligation that is not reflected in a duly enacted statute or in a regulation lawfully promulgated under a statute.” Even if an interpretive rule qualifies as a substantive legal standard that is subject to notice-and-comment obligations under Section 1871, as an interpretive rule, it cannot “establish[] a legal obligation.” Nothing in this Good Guidance Practices rule purports to override or alter the statutory obligations imposed on HHS with respect to the Medicare program under Section 1871.

HHS acknowledges that it has not been fully complying with the requirements of Social Security Act Section 1871(c)(1) and commits to moving into full compliance with this requirement.

Comment: A few commenters expressed support for the proposal that only the Secretary (on a non-delegable basis) can approve significant guidance documents. HHS did not receive any comments as to whether the Secretary should be required to approve certain non-significant guidance documents prior to publication.

Response: We appreciate the commenters’ support and agree that the Secretary should be required to approve, on a non-delegable basis, all significant guidance documents. The Department has also concluded that the Secretary should approve certain guidance documents that have the potential to materially impact the Department’s work, even though their consequences external to the Department do not cause them to be considered “significant.” Accordingly, the Secretary must also approve, on a non-delegable basis, all non-significant guidance documents that he determines will either (1) implicate, including potentially impede, any policy matter of priority to the Secretary, or (2) where one operating division’s proposed non-significant guidance document may create a serious inconsistency, or otherwise interfere, with an action taken or planned by another operating division or the Office of the Secretary.

HHS finalizes the process for issuing guidance documents, including significant guidance documents, as proposed, except to specify that the effective date of the rule will be 30 days after publication of this final rule. HHS is also defining two types of non-significant guidance documents that the Secretary must review on a non-delegable basis.

D. Guidance Repository (§ 1.4)

In the proposed rule, HHS proposed to make its guidance documents

available to the public through the internet, by establishing a guidance repository on the HHS website at www.hhs.gov/guidance. HHS proposed that by November 16, 2020, the Department would be required to have posted to the guidance repository all guidance documents in effect that were issued by any component of the Department, and that the guidance repository must be fully text searchable.

HHS proposed that any web page in the guidance repository that contains guidance documents would clearly indicate that any guidance document previously issued by the Department would no longer be in effect and would be considered rescinded if it is not included in the guidance repository by November 16, 2020. All web pages in the guidance repository containing guidance documents would also state that the guidance documents contained therein “lack the force and effect of law, except as authorized by law or as specifically incorporated into a contract” and “the Department may not cite, use, or rely on any guidance that is not posted on the guidance repository, except to establish historical facts.” HHS proposed that if the Department would like to reinstate a rescinded guidance document not posted to the guidance repository by November 16, 2020, the Department would be able to do so only by following all requirements applicable to newly issued guidance documents.

HHS proposed that guidance documents issued after November 16, 2020 would be required to comply with all applicable requirements in § 1.3, *Requirements for Department Issuance and Use of Guidance Documents*. HHS would be required to post a new or amended guidance document to the guidance repository within three business days of the date on which that guidance document was issued. For significant guidance documents issued after November 16, 2020, HHS would be required to post proposed versions of significant guidance documents to the guidance repository as part of the notice-and-comment process. The Department shall clearly indicate the end of each significant guidance document’s comment period and the mechanisms by which members of the public may submit comments on the proposed significant guidance document. The Department would also be required to post online all HHS responses to major concerns raised in public comments.

HHS received the following comments relating to the proposed guidance repository:

Comment: Some commenters strongly supported the creation of the guidance repository and the enhanced transparency, accountability, and fairness that they believe would come with the requirement that HHS post all operative guidance materials to the guidance repository. Some of these commenters pointed out that, under the Department’s existing processes, it is often not apparent when HHS issues guidance documents, and it is challenging to stay abreast of the Department’s constantly evolving guidance documents.

However, other commenters criticized the proposed requirement that any guidance document not posted to the guidance repository by November 16, 2020, would be considered rescinded, and that HHS could not cite, use, or rely on such guidance documents except to establish historical facts. These commenters argued that the proposed process for rescinding guidance documents decreased agency transparency as compared to the status quo, rather than increasing it. Some commenters also expressed concern that HHS did not have sufficient time to come into compliance with the rule and transfer to the guidance repository all guidance documents that the Department intends to keep in effect, and that HHS should delay the effective date of the final rule. Due to the concern that HHS may accidentally rescind guidance documents by unintentionally omitting them from the guidance repository, several commenters recommended that HHS create a grace period during which time regulated parties could provide inadvertently omitted guidance documents to HHS for posting, without those guidance documents being considered rescinded. A couple commenters suggested that HHS should give a 30-day grace period for any guidance document that is rescinded, before it is treated as being rescinded. Some commenters further stated that it would be confusing to the public and regulated entities if a guidance document appears on an HHS website but is not included in the repository. Other commenters asked HHS to clarify what regulated entities should do if they are unsure as to whether a guidance document is still valid. A few commenters recommended that HHS create a guidance repository housing all rescinded guidance documents, and that where a guidance document replaces another guidance document, the new guidance document should link to the old guidance document being replaced.

Response: HHS believes that the requirement that any guidance

document be posted to the guidance repository or otherwise be considered rescinded will improve upon existing levels of transparency and ultimately will decrease confusion. Currently, it is difficult for regulated parties definitively to ascertain what set of guidance documents HHS views as operative and what guidance documents they are expected to consider. This uncertainty carries its own confusion and causes a lack of transparency. The guidance repository will allow regulated parties to identify the complete set of guidance materials potentially applicable to their conduct. Nor does the fact that HHS can rescind a guidance document by not posting it to the guidance repository diminish existing levels of transparency. With the limited exception of certain Medicare guidance for which notice-and-comment rulemaking is required under Section 1871 of the Social Security Act, and thus a notice-and-comment process is required to rescind them, HHS is free to elect to stop relying on or using a guidance document, including without soliciting public feedback. But currently, the public has no way to know that HHS has decided to withdraw a guidance document, unless HHS chooses to make a specific announcement. Operating divisions remain free to announce when they are rescinding or replacing a guidance document, and we encourage operating divisions to do so. But regardless of whether they do, under the new process, the public will also be able to know that HHS has rescinded a guidance document, because the guidance document will not appear in, or will cease to appear in, the guidance repository.

Posting a comprehensive list of all guidance documents HHS is rescinding and providing a justification for each guidance document the Department is rescinding would impose a significant burden on HHS, for the simple fact that the Department currently lacks a comprehensive list of all guidance documents it has issued. Prior to the issuance of Executive Order 13891, few agencies were required to house all of their guidance documents in a single location. This regulation and Executive Order 13891 are intended to address a symptom of the current problem—the Department issues guidance documents in various media without ever transparently aggregating those materials. HHS has undertaken significant efforts to locate all of its guidance documents and include them in the repository, to help remedy the difficulties previously faced by

regulated parties who were unable to ascertain all potentially applicable guidance materials. The rule provides additional clarity over the status quo, because where a guidance document issued after the effective date of this final rule replaces an existing document, the guidance document must indicate that it “replaces or revises a previously issued guidance document” and “identify the guidance document that it replaces or revises.” 45 CFR 1.3(a)(3)(iii)(D).

Following the issuance of Executive Order 13891, HHS has been working to implement the guidance repository before it issued the August 20, 2020 Notice of Proposed Rulemaking, and HHS does not believe that an additional delay in the effective date, beyond the 30 days incorporated into this final rule, is warranted.⁴ The Department acknowledges that it may erroneously rescind a guidance document because it has failed to identify and upload the guidance document to the guidance repository by the effective date of this rule. However, both HHS and regulated parties effectively have a 30-day grace period before any guidance documents become rescinded as a result of HHS erroneously omitting them from the guidance repository. This is because this final rule will go into effect 30 days after publication. HHS encourages regulated parties to review the guidance documents posted on the guidance repository and notify HHS of guidance documents that may have been inadvertently omitted. Please email the Department at good.guidance@hhs.gov or contact the issuing component of HHS. To the extent a guidance document appears on an HHS website but is not contained in the guidance repository, this should not be confusing: under this final rule, the guidance document is considered rescinded. However, this inconsistency may be a sign that HHS inadvertently failed to upload that guidance document to the guidance repository, and, as discussed in further detail below, HHS can remedy this mistake by issuing the guidance consistent with the procedures in this rule.

Comment: Several commenters also stated that HHS should provide the public with an opportunity to weigh in on what guidance documents should be rescinded. These commenters generally recommended that HHS publish the

⁴ OMB has been involved with this implementation process and approved extensions to provide HHS with additional time to come into compliance with the requirements of Executive Order 13891. See 85 FR 55306 (Sept. 4, 2020); 85 FR 39919 (July 2, 2020); 85 FR 15482 (Mar. 18, 2020).

criteria it will apply when deciding to rescind guidance documents. Some commenters also requested that HHS post a justification for every guidance document that the Department rescinds.

Response: HHS currently has discretion to rescind a guidance document without soliciting public feedback and, indeed, without even providing notice to regulated parties. The proposed rule was not intended to alter the Department’s existing authority to rescind guidance documents without engaging in a public comment process, although, as described above, the proposed rule would ensure that regulated parties, by searching the guidance repository, can identify when guidance documents are or are not considered operative. HHS currently lacks the resources to draft publicly issued justifications for every guidance document that the Department rescinds. And, as previously explained, HHS cannot compile a list of guidance documents that potentially may be rescinded, or a justification for why they are being rescinded. HHS will post all guidance documents that it intends to continue to use to the guidance repository, and it will not so post guidance documents that are outdated, or that HHS otherwise no longer intends to use.

Comment: A few commenters asked HHS to provide notification, for those who choose to opt into receiving such notifications, of when the Department posts new guidance documents to the guidance repository and when HHS rescinds a guidance document.

Response: HHS currently lacks the resources to implement this process. It will consider adding this requested functionality in the future. However, the guidance repository allows users to sort by “Issue Date,” *i.e.*, the date on which the guidance document was issued. This will allow users to review the subset of most recently issued guidance documents.

Comment: A couple of commenters suggested that HHS maintain a repository of rescinded guidance documents, and that where a guidance document replaces another guidance document, the new guidance document should link to the replaced guidance document.

Response: HHS currently lacks the resources to implement either suggestion. In particular and as discussed above, the Department currently lacks a comprehensive list of all guidance documents it has issued. HHS will consider a future guidance repository of guidance documents rescinded after the effective date of the final rule. Regardless, for these guidance

documents, regulated parties will be able to ascertain if a rescinded guidance is replaced by a new guidance document, because the replacement guidance will be required to contain a reference to the rescinded guidance.

Comment: A few commenters asked HHS to clarify the effect of HHS rescinding a guidance document. One commenter asked HHS to clarify that if a guidance document's rescission has substantive effect, that the effect will be prospective only. One commenter suggested that HHS incorporate a "hold harmless" provision in the final rule, which would guarantee regulated entities that they would not be penalized if they rely on a guidance document that has been rescinded due to not being included in the guidance repository.

Response: If HHS rescinds a guidance document, the Department may not cite, use, or rely on that guidance document, except to establish historical facts. Guidance documents reflect the Department's interpretations and policies during the time period that they are in effect. Because guidance documents cannot impose binding legal obligations on regulated entities independent of obligations imposed by duly enacted statutes or regulations, the consequences of rescinding a guidance document should generally be minimal. *See Mortgage Bankers*, 575 U.S. at 103 (explaining that interpretive rules cannot change the regulation or statute they interpret). Because guidance documents generally cannot impose any new binding obligations, there rarely should be circumstances where entities adopt practices consistent with a guidance document that is subsequently rescinded and, as a result, are in noncompliance with the law and subject to penalty. Accordingly, HHS sees no need for inclusion of a "hold harmless" clause in the final rule.

Comment: A couple commenters stated that the process for reinstating rescinded guidance is vague, impractical, time consuming, creates uncertainty, and will inhibit access to guidance documents. Other commenters claimed that rescinding guidance would create confusion, because it could be interpreted by some as a reversion to a different policy than the one explained in the rescinded guidance.

Response: HHS respectfully disagrees with these commenters. As explained in the proposed rule, to reinstate a rescinded guidance document, HHS will merely need to use the same process that it will use for all guidance documents newly issued after the effective date of this final rule. That process, for all but the generally small

number of significant guidance documents, merely requires HHS to include a disclaimer and six information fields in the guidance document, and to ensure that the content adheres to pre-existing legal obligations under the APA. This process is not overly burdensome for the Department, and if an operating division wants to re-issue guidance, it can, and will, readily do so. HHS believes that some of the commenters' concerns stem from misunderstandings about guidance documents. Guidance documents cannot alter legal obligations, and therefore whether a guidance document is rescinded should not create any confusion about a regulated party's legal obligations—they remain the same. If a regulated party is confused about whether an operating division is altering its interpretation of a statute or regulation, the regulated party should reach out to the relevant operating division to ask for clarification.

Comment: A few commenters suggested that HHS continue to post guidance materials to operating division-specific websites, in addition to posting those same materials to the guidance repository. A couple commenters further suggested that guidance materials on operating division websites link to the guidance document in the guidance repository.

Response: HHS currently lacks the resources to provide the requested cross-linking between guidance documents on operating division websites and on the guidance repository. However, HHS will continue to post guidance documents on operating division websites, in parallel with posting those materials to the guidance repository. In general, the posting of guidance documents to the guidance repository is not intended to, and will not, alter or otherwise disrupt the posting of guidance documents to operating division websites.

HHS finalizes the requirements relating to the guidance repository as proposed, except to specify that the effective date of the rule will be 30 days after publication of this final rule.

E. Procedure To Petition for Review of Guidance (§ 1.5)

In the proposed rule, HHS proposed that any interested party would be able to petition HHS to withdraw or modify any particular guidance document. Such petitions would include requests to determine whether

- A guidance document, no matter how styled, imposes binding obligations on parties beyond what is required by the terms of applicable statutes and/or regulations.

- An HHS component is using a guidance document to create additional legal obligations beyond what is required by the terms of applicable statutes and/or regulations.

- HHS is improperly exempting a guidance document from the procedures set forth in the proposed rule.

As part of this petition process, HHS proposed that the interested party would be able to ask HHS to remedy the deficiency relating to the use or contents of the guidance document by modifying or withdrawing the guidance document.⁵ HHS notes that the remedy for a successful petition commonly may be modification or withdrawal of a guidance document, and HHS is not waiving the presentment and exhaustion requirements for claims arising under the Medicare statute, including claims for payment and coverage. Any such claim that an interested party asserts is related to the guidance document that is the subject of a petition under this section must still move through the existing administrative process for that claim, including exhaustion.

HHS proposed that petitions must be addressed to HHS in writing, and the guidance repository would include clear instructions to members of the public regarding how to petition for review of guidance, including how such petitions can be submitted, and an HHS office responsible for coordinating such requests.

HHS proposed that, in order to facilitate transparency and avoid duplication of work, HHS would publish all responses to petitions for guidance review in a designated section of its online guidance repository. If HHS were to receive multiple similar petitions within a short time period, HHS proposed that the Department could aggregate those petitions and respond to them in a single response, so long as all petitions were responded to within the appropriate time period. It further proposed that HHS must respond to all petitions within 90 business days of the date on which the petition was received. The time period to respond would be suspended if HHS were to need to request additional information from the person who submitted the petition or to consult with other stakeholders. Under the proposed rule, HHS's response to any such petition would be considered final agency action reviewable in court, because it would mark the

⁵ However, an interested party could not use this process to seek changes based on the quality of the information contained in a document; there are other processes to address the quality of information contained in HHS issuances.

consummation of HHS's decision-making process and legal consequences flow from the response to the petition. *See, e.g., Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, 1022 (D.C. Cir. 2000) (defining reviewable agency action).

HHS received the following comments relating to the proposed petition process.

Comment: Several commenters supported the proposed petition process. Other commenters were concerned that the petition process might delay the issuance of guidance documents or that the petition process would be too burdensome on the Department. A couple of commenters stated that the petition process would create uncertainty and confusion, because regulated parties would feel as though they cannot rely on guidance that could be rescinded at any time, and furthermore, the ability of "any interested party" to use the proposed petition process would give almost anyone the opportunity to undermine guidance documents. A few commenters suggested that the petition process should only apply to guidance documents issued after the effective date of the final rule; others conversely asked HHS to clarify that the petition process does apply to guidance documents issued before the effective date of the final rule. One commenter asked HHS to clarify that petitions can be filed whenever an interested party identifies a perceived issue with a guidance document.

Response: HHS appreciates the commenters' support and agrees in particular with the commenter who characterized the petition process as "key to policing compliance with the principles" set forth in this Good Guidance Practices rule. HHS does not believe that the proposed petition process would delay or otherwise impact the issuance of guidance documents. This is because the petition process is only available to challenge guidance documents that have already been issued, and guidance documents will remain in effect throughout the petition process, unless and until HHS issues a petition response concluding that a guidance document should be modified or rescinded. HHS believes that the 90-business-day period in which to respond to petitions provides sufficient time to accommodate petition responses alongside the work of issuing new guidance documents, without unduly straining HHS resources and delaying the issuance of new guidance documents.

HHS agrees that the term "interested party" is broad, and extends to more

than merely regulated parties, however, HHS does not think that the petition process will undermine the utility of the Department's guidance documents: HHS can currently rescind guidance documents at any time; therefore, it does not believe that the petition process would undermine the extent to which regulated parties feel comfortable looking to guidance documents for HHS's current views on the subjects covered by such documents.

HHS clarifies that the petition process can be applied to any HHS guidance document, regardless of when HHS issued that guidance document, so long as the guidance document is in effect at the time the petition is filed. HHS also clarifies that interested parties can file a petition at any time. In other words, regulated parties are under no obligation to file a petition within a certain time period.

Comment: One commenter asked HHS to clarify the standard that HHS will use to grant a petition. This commenter also suggested that HHS clarify that the final rule requires the Department to clearly grant or deny the requested remedy and include a rationale for the decision. One commenter asked HHS to clarify that the petition process can be used to challenge a guidance document that HHS initially treated as non-significant and assert that it should actually be categorized as significant.

Response: Under § 1.5(a)(1)–(3), as finalized in this rulemaking, interested parties can petition HHS and assert one of three bases for the petition:

- The substance of an HHS guidance document is unlawful, *i.e.*, the guidance document purports to impose binding new obligations on regulated parties.
- While the substance of an HHS guidance document may be lawful, a division of HHS is using or interpreting the guidance document unlawfully, *i.e.*, to impose binding new obligations on regulated parties.
- HHS is improperly exempting a guidance document from the requirements in the Good Guidance Practices rule.

HHS clarifies that § 1.5(a)(3) allows interested parties to challenge a guidance document that HHS initially treated as non-significant, thereby improperly exempting that guidance document from this rule's requirements for significant guidance documents.

HHS will respond to a petition, generally by agreeing either to modify or withdraw the challenged guidance document or documents, modify its application or treatment of the challenged guidance document or documents, or declining to take any action. If HHS agrees with the petitioner

that a guidance document is substantively unlawful, is being used unlawfully, or is being improperly exempted from the requirements of this rule, then HHS will take actions that bring the Department's conduct, and the guidance documents, into compliance with all legal obligations, including this Good Guidance Practices regulation. HHS agrees that the proposed § 1.5(e) is insufficiently clear about what is required in HHS's response to a petition. Accordingly, in finalizing § 1.5(e), HHS modifies the text to clarify that the Department's petition response must state whether the Department agrees or disagrees with the petition; the Department's rationale for such position; and if the Department agrees that the petitioner has identified an unlawful action, that the Department must remedy the unlawful action.

Comment: A few commenters asked HHS to give regulated parties an opportunity to respond to or comment on petitions.

Response: In order to streamline the petition process and ensure a prompt response within the 90-business-day time limit, HHS will not accept comments on petitions from third parties.

Comment: Some commenters asked HHS to clarify that guidance documents would remain in effect during the petition process, while other commenters suggested that HHS clarify that guidance documents will be held in abeyance, and viewed as not in effect, pending the Department's response to a petition.

Response: The initiation of a petition regarding a particular guidance document or documents will have no immediate impact on those guidance documents. Instead, only if HHS agrees with the petitioner that the guidance document(s) at issue in the petition are unlawful will HHS modify or rescind the guidance document(s). Temporarily withdrawing, or holding in abeyance, guidance documents every time they are the subject of a petition would be extraordinarily disruptive to regulated parties and the Department.

Comment: Several commenters suggested that HHS shorten the time period to respond to a petition to less than 90 business days. A couple of commenters suggested a longer time period in which to respond. Several commenters suggested that HHS place a time limit on the extent to which the Department can suspend this 90-day clock when consulting with stakeholders. A couple of commenters asked HHS to implement consequences for failing to follow the procedures in

this rule, including the petition response time.

Response: HHS finalizes the 90-business-day time period. This strikes the right balance between ensuring that HHS has sufficient time to thoughtfully respond to petitions and seeking to issue petition responses relatively promptly. HHS does not limit the time period during which the Department can suspend the 90-day clock when consulting with stakeholders or incorporating any specific penalty for non-compliance with the procedures in this rule. However, HHS believes that in these circumstances, regulated parties could have a cause of action under the APA for delayed or withheld agency action.

Comment: One commenter stated that this Good Guidance Practices rule is unnecessary, because regulated parties today can file APA challenges if an agency purports to impose binding obligations through guidance.

Response: HHS agrees that regulated parties currently may have a cause of action under the APA if the Department were to purport to impose binding obligations through guidance documents, unless authorized by law. This Good Guidance Practices rule seeks to enhance the Department's practices with respect to guidance, including by creating a central guidance repository that will allow regulated parties to search for potentially relevant guidance documents.

Comment: One commenter asked that HHS publish not just its responses to petitions, but also the petitions themselves.

Response: HHS will publish in the guidance repository petition requests alongside petition responses.

Comment: A few commenters asked HHS to clarify that the petition process does not affect the availability of other legal causes of action, including those under the APA, and in particular, that filing a petition with HHS is not a threshold requirement for a judicial challenge relating to a guidance document.

Response: HHS agrees that the petition process does not create an administrative exhaustion requirement or affect the availability of other legal causes of action. In some circumstances, Article III jurisdiction may exist to challenge a guidance document or use of a guidance document, even without a prior petition. The petition process is available for those who would like to engage administratively with the Department, and may provide an avenue to resolve issues without the need for litigation.

Comment: One commenter asked HHS to accept petitions alleging that the Department of Justice or a qui tam relator has used a guidance document inappropriately.

Response: HHS declines to incorporate this proposal; HHS will only accept petitions relating to its own conduct. HHS acknowledges that some actors outside of HHS, such as qui tam relators, could use a guidance document inappropriately, in a manner that attempts to impose binding new obligations on regulated parties. However, HHS lacks the authority to grant a remedy with respect to the conduct of the Department of Justice or qui tam relators. HHS suggests that in these circumstances, regulated parties file a petition with HHS seeking clarification as to the appropriate scope of the guidance document at issue. HHS also notes that such use of guidance documents by the Department of Justice is inconsistent with the January 25, 2018 Memorandum from then-Associate Attorney General Rachel Brand, "Limiting Use of Agency Guidance Documents In Affirmative Civil Enforcement Cases," and should be brought to the attention of Department of Justice leadership.

Comment: One commenter suggested that when HHS aggregates similar petitions filed within a "short" time of one another, HHS should define "short" as 14 calendar days and should require a reasoned response to every substantive issue raised by each of the aggregated petitions.

Response: HHS respectfully declines to adopt a rigid time period for when HHS can aggregate responses to similar petitions filed within a short time period. However, each response to a petition must satisfy the 90-business-day time limit (subject to any permissible tolling); this requirement will serve as a natural time limit on the extent to which HHS can aggregate petition responses.

Comment: One commenter suggested that HHS incorporate an express judicial reviewability clause in the final rule's regulation text.

Response: The regulation text governs HHS's own actions. HHS cannot directly confer Article III jurisdiction through statements in regulation text. Accordingly, HHS does not agree that adding such a clause in the final rule's regulation text would alter the rule.

HHS finalizes the petition process in § 1.5 as proposed, with clarifying edits to § 1.5(e).

III. Required Rulemaking Analyses

A. Executive Orders 12866 and 13563: Regulatory Planning and Review Analysis

HHS examined the effects of this rule as required by E.O. 12866, "Regulatory Planning and Review," 58 FR 51,735 (Oct. 4, 1993), E.O. 13563, "Improving Regulation and Regulatory Review," 76 FR 3821, (Jan. 21, 2011), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select regulatory approaches that maximize net benefits. A Regulatory Impact Analysis must be prepared for major rules with economically significant effects. The Department has determined that this rulemaking is not a significant regulatory action under these Executive Orders. In addition, the Department does not anticipate that this rulemaking will impose measurable costs on regulated parties. This final rule describes agency processes for issuing guidance and responding to petitions regarding guidance that allegedly is inappropriate or is being used inappropriately. Implementation of this final rule will require HHS expenditures to create and maintain the guidance repository, along with employing a new process for the review of significant guidance documents and for the review of guidance documents which are the subject of a petition for review. For 2020, HHS expended approximately \$2.4 million to develop the guidance repository. HHS expected annual costs for 2021 and 2022 to be about \$1 million. However, the Department expects benefits to accrue as a result of the streamlined and clarified process for issuing guidance documents. The Department anticipates that the public, and, in particular, regulated parties, will benefit from greater efficiencies and more transparency in how the Department operates and regulates. The Office of Management and Budget (OMB) has reviewed this rule.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has determined that this final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Section 202(a) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532(a), requires that agencies prepare a written statement, which includes an assessment of anticipated costs and

benefits, before proposing “any rule that includes any federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.” In 2019, that threshold was \$154 million. HHS does not expect this rule to exceed the threshold.

B. Executive Order 13771

This final rule is neither a regulatory nor a deregulatory action under Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” 82 FR 9339 (Feb. 3, 2017), because this rule is estimated to impose no more than *de minimis* costs on regulated entities.

C. Regulatory Flexibility Act and Executive Order 13272

The Department has examined the economic implications of this final rule as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996 (Pub. L. 104–121), which amended the RFA, require HHS to analyze options for regulatory relief of small businesses. If a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. The Department considers a rule to have a significant impact on a substantial number of small entities if the rule has at least a three percent impact on revenue on at least five percent of small entities. The Department anticipates that this final rule will allow small entities to operate more efficiently, by increasing the transparency of government regulation. As a result, the Department has determined, and the Secretary certifies, that this final rule does not have a significant impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments or has federalism implications. The Department has determined that this final rule does not impose such costs or have any federalism implications.

E. Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.), the Department has reviewed this final rule and has determined that it does not create new collections of information.

List of Subjects in 45 CFR Part 1

Guidance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR, subtitle A, subchapter A, by adding part 1 to read as follows:

PART 1—GOOD GUIDANCE PRACTICES

Sec.

- 1.1 Scope.
- 1.2 Definitions.
- 1.3 Requirements for Department issuance and use of guidance documents.
- 1.4 Guidance repository.
- 1.5 Procedure to petition for review of guidance.

Authority: 42 U.S.C. 1302; 5 U.S.C. 301, 551 *et seq.*

§ 1.1 Scope.

This part shall apply to guidance documents issued by all components of the Department, until the Secretary amends the Food and Drug Administration’s good guidance regulations at 21 CFR 10.115 to bring them into conformance with the requirements of this part, at which point, such amended regulations shall apply to the Food and Drug Administration’s issuance and use of guidance documents.

§ 1.2 Definitions.

The following definitions apply to this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

Guidance document means any Department statement of general applicability, intended to have future effect on the behavior of regulated parties and which sets forth a policy on a statutory, regulatory, or technical or scientific issue, or an interpretation of a statute or regulation. The term “guidance document” does not include rules promulgated pursuant to notice and comment under 5 U.S.C. 553, or similar statutory provisions; rules exempt from rulemaking requirements under 5 U.S.C. 553(a); rules of agency organization, procedure, or practice; decisions of agency adjudications under 5 U.S.C. 554, or similar statutory provisions; internal guidance directed to the Department or other agencies that is not intended to have substantial future effect on the behavior of regulated parties; internal executive branch legal

advice or legal opinions addressed to executive branch officials; legal briefs and other court filings; grant solicitations and awards; or contract solicitations and awards. Pre-enforcement rulings, *i.e.*, communications with a person that interpret or apply the law to a specific set of facts, such as letter rulings, advisory opinions, no-action letters, and notices of noncompliance, do not constitute guidance documents. If, however, the Department issues such a document that on its face is directed to a particular party, but the content of the document is designed to guide the conduct of other regulated parties, such a document would qualify as guidance.

Guidance repository means an online database containing or linking to guidance documents.

Issued means the Department initiated or sponsored distribution of information to the public. “Issued” does not include distribution intended to be limited to government employees or agency contractors, or distribution required under law or agency disclosure policies.

Significant guidance document means a guidance document that may reasonably be anticipated to lead to an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles of Executive Order 12866. The term “significant guidance document” does not include the categories of documents exempted in writing by the Office of Management and Budget’s (“OMB”) Office of Information and Regulatory Affairs (“OIRA”).

§ 1.3 Requirements for Department issuance and use of guidance documents.

(a) **Guidance documents.** (1) Under the Administrative Procedure Act, the Department may not issue any guidance document that establishes a legal obligation that is not reflected in a duly enacted statute or in a regulation lawfully promulgated under a statute.

(2) The Department may not use any guidance document for purposes of requiring a person or entity outside the

Department to take any action, or refrain from taking any action, beyond what is required by the terms of an applicable statute or regulation.

(3) Each guidance document issued by the Department must:

(i) Identify itself as “guidance” (by using the term “guidance”) and include the following language, unless the guidance is authorized by law to be binding: “The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.”;

(ii) Not direct parties outside the Federal Government to take or refrain from taking action, except when restating—with citations to statutes, regulations, or binding judicial precedent—clear mandates contained in a statute or regulation; and

(iii) Include the following information:

(A) The activities to which and the persons to whom the document applies;

(B) The date of issuance;

(C) Unique agency identifier;

(D) Whether the guidance document replaces or revises a previously issued guidance document and, if so, identify the guidance document that it replaces or revises;

(E) Citation to the statutory provision(s) and/or regulation(s) (in Code of Federal Regulations format) that the guidance document is interpreting or applying; and

(F) A short summary of the subject matter covered in the guidance document.

(4) The Secretary must approve, on a non-delegable basis, all non-significant guidance documents that the Secretary determines will either

(i) Implicate, including potentially impede, any policy matter of priority to the Secretary, or

(ii) Potentially create a serious inconsistency, or otherwise interfere, with an action taken or planned by another operating division or the Office of the Secretary.

(b) *Significant guidance documents.*

(1) Before the Department issues any significant guidance document, it must be approved, on a non-delegable basis, by the Secretary.

(2) Before issuing any significant guidance document, the Department must:

(i) Submit the significant guidance document to OIRA for review under Executive Order 12866 prior to issuance.

(ii) Provide at least a 30-day public notice and comment period on the

proposed significant guidance document, unless the Department for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment are impracticable, unnecessary, or contrary to the public interest. If no such good cause exists, the public notice (which must be published in the **Federal Register** and posted in the guidance repository) shall include all of the following information:

(A) Information as to where the public may access a copy of the proposed significant guidance document;

(B) Information as to where written comments may be sent, and an internet website where those comments may be reviewed by the public; and

(C) The time period during which comments will be accepted.

(iii) Publish a public response to the major concerns raised during the comment period.

(3) Significant guidance documents must comply with applicable requirements for significant regulatory actions, as set forth in Executive Orders, except that only economically significant guidance documents require a separate Regulatory Impact Analysis.

(4) A significant guidance document may be exempted from any requirement otherwise applicable to significant guidance documents if the Secretary and the Administrator of OIRA agree that exigency, safety, health, or other compelling cause warrants the exemption. The Secretary must make this finding, and the significant guidance document must incorporate the finding and a brief statement of reasons in support.

(5) The Department shall seek from OIRA, as appropriate, categorical determinations that classes of guidance presumptively do not qualify as significant. Any guidance satisfying such a categorical exemption presumptively need not comply with the requirements of this paragraph (b) but must comply with all other requirements applicable to guidance documents. OIRA may determine that a particular guidance document within a categorical exemption is nonetheless significant.

§ 1.4 Guidance repository.

(a) *Existing guidance.* By January 6, 2021, the Department shall maintain a guidance repository on its website at www.hhs.gov/guidance.

(1) The guidance repository shall be fully text searchable and contain or link to all guidance documents in effect that have been issued by any component of the Department.

(2) If the Department does not include a guidance document in the guidance repository by January 6, 2021, the guidance document shall be considered rescinded.

(3) Any web page in the guidance repository that contains or links to guidance documents must state:

(i) That the guidance documents contained therein:

(A) “Lack the force and effect of law, except as authorized by law or as specifically incorporated into a contract.”; and

(B) “The Department may not cite, use, or rely on any guidance that is not posted on the guidance repository, except to establish historical facts.”

(ii) That any guidance document previously issued by the Department is no longer in effect, and will be considered rescinded, if it is not included in the guidance repository.

(4) If the Department wishes to reinstate a rescinded guidance document, the Department may do so only by complying with all of the requirements applicable to guidance documents issued after January 6, 2021.

(b) *Guidance issued after January 6, 2021.* (1) For all guidance documents issued after January 6, 2021, the Department must post each guidance document to the Department’s guidance repository within three business days of the date on which that guidance document was issued.

(2) For significant guidance documents issued after January 6, 2021, the Department shall post proposed new significant guidance to the guidance repository as part of the notice-and-comment process.

(i) The posting shall clearly indicate the end of each significant guidance document’s comment period and provide a means for members of the public to submit comments.

(ii) The Department shall also post online all responses to major public comments.

§ 1.5 Procedure to petition for review of guidance.

(a) Any interested party may petition the Department to withdraw or modify any particular guidance document. Such petitions may include requests to determine whether:

(1) A guidance document, no matter how styled, imposes binding obligations on parties beyond what is required by the terms of applicable statutes and/or regulations;

(2) A component of the Department is using a guidance document to create additional legal obligations beyond what is required by the terms of applicable statutes and/or regulations; or

(3) The Department is improperly exempting a guidance document from the requirements set forth in this part.

(b) As part of a petition under this section, an interested party may ask that the Department modify or withdraw any guidance document in effect at the time of the petition.

(c) Petitions under this section must be addressed to the Department in writing. The Department's guidance repository must include clear instructions to members of the public regarding how to petition for review of guidance, including how such petition can be submitted, and an office at the Department responsible for coordinating such requests.

(d) The Department must respond to all petitions no later than 90 business days after receipt of the petition. The applicable time period for responding is suspended from the time the Department:

(1) Requests additional information from the requestor, until the Department receives the additional information; or

(2) Notifies the requestor of the need to consult with other stakeholders, including but not limited to the Department of Justice or the Department's Office of Inspector General, until the Department completes consultation with other stakeholders.

(e) The Department's written response to petitions must state whether the Department agrees or disagrees with the petition and the Department's rationale. The Department must remedy the substance or use of any guidance documents that it determines in a petition response to be inconsistent with this part or otherwise unlawful. The Department will post all responses to petitions under this section to a designated web page on its guidance repository.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020-26832 Filed 12-3-20; 4:15 pm]

BILLING CODE 4150-26-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1304

RIN 0970-AC85

Flexibility for Head Start Designation Renewals in Certain Emergencies

AGENCY: Office of Head Start (OHS), Administration for Children and

Families (ACF), Department of Health and Human Services (HHS).

ACTION: Interim final rule.

SUMMARY: This interim final rule adds a new provision to the Head Start Program Performance Standards (HSPPS) to establish parameters by which ACF may make designation renewal determinations during a federally declared major disaster, emergency, or public health emergency (PHE) and in the absence of all normally required data.

DATES: This interim final rule is effective on December 7, 2020.

Comment date: To be assured consideration, comments on this final rule must be received on or before February 5, 2021.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Office of Head Start, Attention: Director of Policy and Planning, 330 C Street SW, 4th Floor, Washington, DC 20201.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Office of Head Start, at HeadStart@eclkc.info or 1-866-763-6481. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

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I. Statutory Authority

ACF publishes this interim final rule under the authority granted to the Secretary of Health and Human Services (the Secretary) by sections 641(a), 641(c), and 644(c), of the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110-134).

II. Executive Summary

Purpose of the Interim Final Rule

The Improving Head Start for School Readiness Act of 2007 (the 2007 Reauthorization) of the Head Start Act (the Act) required ACF to establish a system for determining whether Head Start (including Early Head Start) grantees are delivering high-quality and comprehensive services to the children and families they serve. In 2011, ACF issued a regulation (76 FR 70009) to establish the Designation Renewal System (DRS) to meet this requirement. Under the DRS, all Head Start grants were transitioned from indefinite to 5-year grant periods, and any grant that meets one or more of seven specified conditions during the 5-year project period is subject to an open competition for continued funding. Any Head Start grant that does not meet one of the seven DRS conditions becomes eligible for a new noncompetitive 5-year grant. The Act lays out the types of data that must be considered as part of these DRS determinations. Three of the seven conditions of the DRS were revised through a final rule published on August 28, 2020. Due to the ongoing 2019 Novel Coronavirus (COVID-19) pandemic, the ability of ACF to collect all data on grants required for making determinations under the DRS has been severely impaired. This issue is described further in the following paragraph. Furthermore, there may be major disasters, emergencies, or PHEs in the future that similarly impact ACF's ability to collect all information required for making DRS determinations.

Therefore, this interim final rule adds a new section to the HSPPS regulation under Part 1304 Subpart B, Designation Renewal. This new section, § 1304.17, establishes parameters by which ACF may make a designation renewal determination when certain federally declared emergencies prevent collection of all normally required data. As with COVID-19, a major disaster or emergency declared by the President under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.

5170 and 5191) or another PHE declared by the Secretary of Health and Human Services (HHS) under section 319 of the Public Health Service Act (42 U.S.C. 247d) may necessitate extended, unanticipated program closures or temporary shifts to different program models or service delivery mechanisms, which can make certain monitoring or data collection activities unsafe, impossible, and/or invalid. In these situations, ACF may lack certain required data to make designation renewal determinations. In cases where a grantee's 5-year grant is ending and all required data are not available due to the impacts of a federally declared disaster or emergency, § 1304.17 allows ACF to still determine if an open competition is required, or if the grant may be renewed noncompetitively based on the conditions for which ACF has data. Without § 1304.17, ACF would not be able to make DRS determinations, which could result in the loss of critical Head Start services in impacted communities.

Interim Final Rule Justification

On January 31, 2020, Health and Human Services Secretary Alex M. Azar II (the Secretary) determined that a PHE exists retroactive to January 27, 2020,¹ under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19, and on April 21, 2020, the Secretary renewed, effective April 26, 2020, the determination that a PHE exists.² On July 23, 2020, the Secretary again renewed this determination that a PHE exists, effective July 25, 2020.³ The Secretary renewed this determination on October 2, 2020, effective October 23, 2020. On March 13, 2020, the President declared that the COVID-19 pandemic in the United States constitutes a national emergency,⁴ beginning March 1, 2020.

The current PHE requires urgent action on the part of ACF to establish a process by which ACF will meet the requirements of the Act to make designation renewal determinations while ensuring the safety of Head Start program staff, children, and families. As a cohort of Head Start grants approach the end of their 5-year grant periods during the on-going COVID-19 pandemic, ACF must make a

determination under the DRS for these grantees to either receive a new 5-year grant non-competitively or to require an open competition. Extended program closures due to the PHE have made, and continue to make, it impossible for ACF to collect certain data elements relevant to the seven DRS conditions and required as part of designation renewal determinations. In the absence of a DRS determination, these communities could be left without any Head Start services during a particularly challenging time for the children and families Head Start programs serve. To ensure children and families do not lose access to Head Start services during a federally declared disaster or emergency, now and in the future, this interim final rule is needed to quickly establish the process by which DRS determinations will be made under these circumstances.

Ensuring the health and safety of Head Start staff, children, and families is of utmost importance. This IFR directly supports that goal, while establishing a process for ACF to meet the requirements of the Act to make designation renewal determinations during the COVID-19 pandemic and certain other federally declared disasters or emergencies. It is critically important that ACF implements this IFR as quickly as possible. Due to the ongoing PHE, ACF finds good cause to waive notice and comment rulemaking as ACF believes it would be impracticable and contrary to the public interest for it to undertake normal notice and comment rulemaking procedures, as that would delay giving ACF the flexibility to make DRS determinations with the data available and to ensure the continuity of critical Head Start services in impacted communities. For the same reasons, because ACF cannot afford any delay in effectuating this IFR, ACF finds good cause to waive the 30-day delay in the effective date and, moreover, to make this IFR applicable as of publication.

III. Background

Since its inception in 1965, Head Start has been a leader in helping children from low-income families reach kindergarten more prepared to succeed in school. Through the 2007 Reauthorization, Congress required HHS to ensure these children receive the highest quality services possible. In support of that requirement, the 2007 Reauthorization directed the Secretary to establish the Designation Renewal System (DRS) to (1) identify Head Start grantees delivering a high-quality and comprehensive Head Start program that could receive funding noncompetitively for a 5-year period and grantees not delivering a high-quality and

comprehensive Head Start program that will be required to compete for continued funding, and (2) transition all grants from indefinite grants to 5-year grant periods. Congress required that decisions about which grantees would have to compete be based on budget and fiscal management data (including annual audits), program monitoring reviews, classroom quality—and in particular teacher-child interactions—as measured by a valid and reliable research-based observational instrument, and other program information.

In 2011, HHS published a final rule to establish the DRS that included seven conditions. Grants that met one or more of the seven conditions would have their funding subject to an open competition for the next 5-year grant period. Grantees that did not meet a condition became eligible to receive a new noncompetitive 5-year grant. Following the transition of all grants from indefinite to 5-year project periods and considering available data and research, a 2020 final rule⁵ revised the DRS and made changes to three of the seven DRS conditions. Effective November 9, 2020, Head Start grants that meet one or more of the following seven conditions under the DRS are subject to an open competition: (1) Two or more deficiencies under section 641A(c)(1)(A), (C), or (D) of the Act; (2) failure to establish, use, and analyze children's progress on agency-established school readiness goals; (3) scores below competitive thresholds in any of the three domains of the Classroom Assessment Scoring System: Pre-K (CLASS); (4) revocation of a license to operate a center or program; (5) suspension from the program; (6) debarment from receiving federal or state funds or disqualification from the Child and Adult Care Food Program (CACFP); and/or (7) either an audit finding of being at risk for failing to continue as a "going concern," or two or more audit findings of material weakness or questioned costs associated with its Head Start funds in audit reports submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act) for a financial period within the current project period.

The notice and comment process for the 2020 final rule predated the COVID-19 pandemic. In the 2019 notice of proposed rulemaking on the DRS, HHS did not propose any flexibilities within the DRS to make designation renewal determinations in the absence of certain

¹ <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

² <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-21apr2020.aspx>.

³ <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-23june2020.aspx>.

⁴ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

⁵ <https://www.federalregister.gov/documents/2020/08/28/2020-17746/head-start-designation-renewal-system>.

data related to the seven conditions due to a federally declared major disaster, emergency, or PHE. Therefore, these flexibilities could not be included in the DRS final rule that was published on August 28, 2020.

IV. Provisions of the Interim Final Rule

All Head Start grants now operate on a 5-year project period. As a cohort of Head Start grants conclude their 5-year grant period, ACF must make a determination whether grants may be renewed noncompetitively or if they will be subject to an open competition. The Act requires ACF to consider a number of factors in making a designation renewal determination. As described previously, a federally declared major disaster or emergency or PHE can make it unsafe or impossible to collect some of these required data on grants. In particular with the COVID-19 pandemic, ACF has been, and continues to be, unable to collect data from a valid, reliable, research-based, observational measure of classroom quality as required by the Act. The reasons for this are further elaborated in the following paragraph. It is possible that future disasters or emergencies could also preclude ACF from collecting other required data elements necessary for DRS determinations.

ACF meets the requirement in the Act to use a valid, reliable, research-based, observational measure of classroom quality as part of DRS determinations through the administration of the Classroom Assessment Scoring System: Pre-K (CLASS). The CLASS measures the quality of teacher-child interactions on a seven-point scale in three areas or domains: Emotional Support, Classroom Organization, and Instructional Support. As part of the established ACF monitoring process for Head Start grantees, trained reviewers administer the CLASS on-site in a sample of Head Start classrooms for each grant. The scores for each classroom within a grant are then averaged to create grant-level scores. If a grant receives an average CLASS score below the following competitive thresholds for any of the three CLASS domains, the grant is designated for competition under the DRS: A 5 for Emotional Support, 5 for Classroom Organization, and 2.3 for Instructional Support.⁶ Each year, ACF schedules a subset of Head Start grantees for CLASS reviews, depending on where in the 5-year project period

each grant is. The completion of these CLASS reviews within a certain window of time is critical to ensure ACF can complete the necessary subsequent steps for each grant, to determine and notify the grantee of their status as either competitive or non-competitive under the DRS with sufficient time prior to the end of their current 5-year project period to run the necessary competitive processes.

In March 2020, ACF made the decision to temporarily suspend the administration of CLASS reviews in Head Start classrooms due to the COVID-19 PHE. At that time, ACF was concerned about jeopardizing the health and safety of Head Start children and staff by sending outside observers into Head Start classrooms to conduct CLASS reviews. Many Head Start classrooms across the country closed due to increased health and safety concerns amid the spread of COVID-19. Due to the evolving nature of the COVID-19 pandemic, ACF has been uncertain about the ability to resume CLASS reviews during the 2020-2021 program year. Therefore, in an information memorandum directed to Head Start and Early Head Start grantees published on September 24, 2020, ACF announced the decision to suspend all CLASS reviews for the 2020-2021 program year.⁷

There are multiple factors that informed this decision. First, as the impacts of the COVID-19 pandemic are very different in different parts of the country, Head Start programs must make locally determined decisions regarding whether they can safely operate in-person services for children and families. Programs that do not operate in-person services for a period of time are, instead, providing some type of remote or virtual services for enrolled children and families. The CLASS tool was not originally designed to conduct observations of virtual interactions between teachers and children, and the research on such use of the tool is very limited. Therefore, if a program is closed for in-person services for an extended period due to the pandemic, and even if the program is providing virtual services, ACF cannot conduct CLASS reviews of virtual teaching for monitoring and oversight purposes with those programs.

Second, as previously alluded, for Head Start programs that are providing in-person services to children and families during part or all of the 2020-2021 program year, ACF is not able to send additional outside individuals into

classrooms to conduct CLASS observations without increasing the risk of exposing Head Start children and staff to the virus. This is consistent with best practice guidance from the Centers for Disease Control and Prevention on safely providing child care in group settings during the COVID-19 pandemic.⁸

Finally, ACF expects that Head Start services may look very different during the 2020-2021 program year due to the COVID-19 pandemic and the PHE. Therefore, ACF strongly believes the CLASS instrument would not capture an accurate picture of teacher-child interactions during this program year. For instance, due to the fact that some programs will likely be operating virtual services for part or all of their enrollment, and this might change throughout the program year, there is a lot of uncertainty for ACF around the availability of a sufficient sample size for CLASS observations for any given grantee.

In addition, ACF expects that in-person classroom interactions and activities may not be 'typical' during the 2020-2021 program year, as the result of modifications made for the safety of children, families, and staff. For example, classrooms will likely have smaller group sizes and more individual time for children to allow for physical distancing (as opposed to small and large group time, which are usually common in early childhood classrooms). Staff and children will likely be wearing masks, and a key part of accurate CLASS observations depends on the observer being able to observe the reactions of the children to their teacher during an observation period.

Furthermore, ACF expects child attendance will be lower than normal during the 2020-2021 program year, whether out of parental fear of sending their children back to in-person Head Start settings due to possible exposure to the virus, or out of proactive measures taken by the program to reduce classroom group sizes. For these reasons, ACF believes the scores a grantee would receive on a CLASS review during this unusual time would be systematically different from, and not representative of, program learning environments that are more typically observed throughout the 5-year grant period.

While ACF strongly believes it is still important to promote high-quality learning environments for all children

⁶ As promulgated in the DRS final rule published on August 28, 2020, the competitive threshold for the Instructional Support domain is 2.3 for CLASS reviews conducted up through July 31, 2025, and then this threshold increases to 2.5 for CLASS reviews conducted on or after August 1, 2025.

⁷ <https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-20-05>.

⁸ <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html#open>.

served in Head Start, the health and safety of children and staff during this PHE, as well as the appropriate use of the CLASS tool, are also paramount considerations for ACF. Therefore, ACF has made the determination that a valid and reliable observational instrument that assesses classroom quality as required by the Act does not exist during the current PHE, so ACF cannot fulfill this requirement during this time. The implementation of this IFR provides ACF the flexibility to proceed with DRS determinations in the absence of CLASS data that is the result of the ongoing PHE. This IFR also provides this flexibility for a federally declared major disaster, emergency, or PHE in the future, which could also impact the administration of CLASS or the collection of other data elements necessary for making DRS determinations. The flexibility will allow ACF to ensure the continuity of critical Head Start services for the nation's most vulnerable children and families. As stated previously, ensuring high quality classroom learning environments for enrolled children is still an important priority for ACF. ACF offers a wealth of training and technical assistance (TTA) resources to promote quality improvement in classroom learning environments and teacher-child interactions, including materials on the Early Childhood Learning Knowledge Center website, interactive webinars and learning modules, and online opportunities for grantees to share and learn about best practices with other grantees. ACF also funds a regional TTA system, which includes individualized support from regional specialists for grantees on an as-needed basis and at the discretion of each ACF region.

In summary, the provision established in § 1304.17 allows ACF to make designation renewal decisions with the data available when the determination must be made in order to ensure the continuity of Head Start services, even if certain federally declared emergencies or disasters preclude ACF from collecting all of the data required in the Head Start Act. This flexibility ensures the safety of Head Start staff, children, and families and the continuity of Head Start services.

V. Regulatory Process Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act, requires federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore

regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term "small entities," as defined in the RFA, 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. Under this definition, some Head Start grantees may be small entities. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. However, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96-354), that this rule will not have a significant impact on a substantial number of small entities. During a major disaster or emergency or PHE—such as COVID-19—in which ACF is not able to collect all data elements required for DRS determinations and must exercise the flexibility set forth in § 1304.17 of the HSPPS, ACF expects there to be fewer grantees in competition for the relevant competition cycles. Therefore, ACF does not expect there to be a significant impact on a substantial number of small entities. However, ACF invites comments on this IFR if any member of the public believes their business, organization, or governmental jurisdiction qualifies as a small entity and that the actions set forth in this IFR would have a significant economic impact on that small entity.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), see 2 U.S.C. 1501 *et seq.*, was enacted to avoid imposing unfunded federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately \$156 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of the threshold.

Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a policy or regulation may negatively affect family

well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking assessment, see Public Law 105-277, because the action it takes in this interim final rule will not have any impact on the autonomy or integrity of the family as an institution. However, ACF invites public comment on whether the actions set forth in this interim final rule would have a negative effect on family well-being.

Federalism Assessment Executive Order 13132

Executive Order 13132 requires federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rule will not have substantial direct impact on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Congressional Review

The Congressional Review Act (CRA) allows Congress to review "major" rules issued by federal agencies before the rules take effect, see 5 U.S.C. 802(a). The CRA defines a major rule as one that has resulted, or is likely to result, in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets, see 5 U.S.C. Chapter 8. This action is not a major rule because it will not have such effect.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995, Public Law 104-13, seeks to minimize government-imposed burden

from information collections on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The Paperwork Reduction Act defines “information” as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). This action does not include any new information collection requirements or changes to existing information collection requirements.

Regulatory Planning and Review
Executive Order 12866, Executive Order 13563, and Executive Order 13771

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 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in, Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. A regulatory impact analysis must be

prepared for major rules with economically significant effects (\$100 million or more in any 1 year), and an “economically significant” regulatory action is subject to review by the Office of Management and Budget. ACF does not expect this to be a significant rule.

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017 (82 FR 9339, February 3, 2017) and requires that the costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” This rulemaking is not expected to be subject to the requirements of Executive Order 13771 because it would result in no more than *de minimis* costs.

VI. Regulatory Impact Analysis

Need for Regulatory Action

This regulatory action is necessary to provide ACF the flexibility to make determinations under the Head Start DRS, even in the absence of all required data, if this lack of data is due to a major disaster or emergency or PHE. The ongoing PHE due to COVID-19 has prevented ACF from conducting on-site observations of grantees with the CLASS tool (an observational measure of the quality teacher-child interactions in the classroom), which is required by regulation. Data from these observations provide one piece of information for determining whether a Head Start grant can be renewed non-competitively or must compete with other potential applicants for continued funding. Several grants (60) whose five year project periods are ending in FY 2022 would typically have their CLASS reviews completed by ACF as part of the federal monitoring process sometime during FY 2020 or FY 2021. However, due to the PHE, ACF has not conducted CLASS reviews since March 2020 and has decided not to conduct any future CLASS reviews until at least the fall of 2021. So these 60 grants whose five year project periods are nearing completion do not yet have CLASS data as part of federal monitoring. Without this regulatory action, CLASS reviews for these 60 grants would have to be conducted in the fall of 2021, and several other decisions must be made by ACF after the CLASS reviews are completed, but before funding can be renewed either competitively or non-competitively. Therefore, having to conduct CLASS reviews for these grants so late in their project periods creates a strong risk of the project periods expiring before ACF can complete the

grant renewal process for these 60 grants. This puts the Head Start services for enrolled children and families at great risk in the impacted service areas.

Cost Savings Analysis

There are approximately 2,200 grants in Head Start. Absent this final rule, it is estimated that 60 or 3 percent of all Head Start grants will require CLASS reviews to be conducted in FY 2022 for renewal determinations that must also be made in FY 2022. CLASS reviews would need to be conducted to acquire the necessary data to make renewal determinations as described in the Head Start Act and the Head Start Program Performance Standards. Typically, CLASS reviews cost about \$8,500 per grant to the federal government. This primarily includes the cost of travel, lodging, and wages for CLASS reviewers. The total baseline cost of the 60 CLASS reviews in FY 2022 is estimated at \$510,000.

Across all Head Start grants, ACF estimates that approximately 13 percent of grants meet the CLASS condition of the DRS and are, therefore, required to compete for continued funding. If ACF applies this percentage to the 60 grants lacking CLASS data due to the COVID-19 pandemic, this results in an estimate of approximately 8 of these 60 grants that would be required to compete for continued funding due to low CLASS scores if they did have CLASS data available.

The cost for competition associated with completing a competitive application is estimated at \$3,097 per applicant. This assumption includes 60 hours per competitive application at a cost of approximately \$51.62 per hour in staff time (ACF multiplies an hourly wage of approximately \$25.81 by two to account for fringe benefits). Applications would likely be completed by a combination of the Head Start Assistant Director and other managers in an early childhood program (*i.e.*, Child Development Manager or Family and Community Partnership Manager). The average hourly wage for these positions is based on the U.S. Bureau of Labor Statistics Job Code 11–9031. ACF multiplies \$3,097 per applicant by sixteen to account for the eight incumbent grantees applying for funds as well as eight non-incumbent applicants for those service areas. This results in a baseline estimated cost of \$49,552 for these eight grantees to complete competitive applications in FY 2022 if they did in fact have to compete, as well as eight additional applicants. The total baseline cost for conducting CLASS reviews for these 60 grants and for competition associated

with 8 of these 60 grants is \$559,552. With this final rule, these baseline costs would not apply and are therefore cost savings in this analysis.

With this final rule, those eight grantees that would have been required to compete in FY 2022 would instead need to complete an annual grant application for a new annual award. ACF assumes it takes approximately 33 hours of staff time to complete a non-competitive application. Using the same assumptions as above for hourly wage, ACF estimates it costs approximately \$1,703 per grant to complete a non-competitive application. ACF multiplies this by eight grants, which results in a total cost of approximately \$13,624 for these grantees to complete a non-competitive continuation application in FY 2022. Taking this cost into account, the total cost savings associated with this final rule is approximately \$545,928. This includes cost savings to those entities that are not existing Head Start grantees as there would be no funding opportunity to which they would submit a competitive application.

A qualitative opportunity cost for this new rule is fewer opportunities for entities that are not existing Head Start grantees to be able to compete and potentially grow as an early childhood provider in their community, for the eight communities where grants were not designated for competition due to potentially low CLASS scores. There is also the qualitative cost of children continuing to be served by grantees which may be providing lower quality classroom learning environments that would have led to competition. However, ACF believes there is an added benefit of existing grantees still receiving DRS determinations in a timely manner and not experiencing undue stress around the status of their grant, particularly in the midst of COVID-19 when continuity of Head Start services for children and families is critically important. Additionally, these grantees would be able to continue to access and receive support from OHS through OHS' extensive training and technical assistance system, to facilitate continued quality improvement in classroom quality care and service provision for children and families.

ACF does not believe there will be a significant economic impact from this regulatory action since the flexibility in this interim final rule will only be exercised when necessary. A federally declared major disaster, emergency, or PHE that limits the ability of ACF to collect all data necessary to assess programs for DRS determinations, such as the COVID-19 PHE, are rare and, therefore, ACF anticipates this

flexibility will rarely be exercised. ACF also anticipates that this flexibility will be exercised in more localized disasters in the future that affect a very small subset of grantees.

This RIA analyzes a one-year time horizon covering FY 2022. In the coming years, ACF anticipates very few grants being impacted by the provision in this interim final rule. However, ACF also recognizes it is difficult to predict future potential emergencies or disasters when ACF may need to again exercise the flexibility laid out in this regulatory provision, resulting in uncertainty around potential costs and cost savings. ACF invites public comment on the reasonableness of the assumptions in this regulatory impact analysis.

Tribal Consultation Statement

ACF conducts an average of five tribal consultations each year for those tribes operating Head Start and Early Head Start. The consultations are held in four geographic areas across the country: Southwest, Northwest, Midwest (Northern and Southern), and Eastern. The consultations are often held in conjunction with other tribal meetings or conferences, to ensure the opportunity for most of the 150 tribes that operate Head Start and Early Head Start programs are able to attend and voice their concerns about issues regarding service delivery. ACF completes a report after each consultation, and then compiles a final report that summarizes the consultations and submits the report to the Secretary at the end of the year. ACF invites public comment on this interim final rule if there are concerns specific to Native communities and programs.

List of Subjects in 45 CFR Part 1304

Designation Renewal System, Classroom Assessment Scoring System (CLASS), COVID-19, Education of disadvantaged, Grant programs—social programs, Head Start, Monitoring.

Dated: November 11, 2020.

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: November 13, 2020.

Alex M. Azar, II,

Secretary.

For the reasons discussed in the preamble, ACF amends 45 CFR part 1304 as follows:

PART 1304—FEDERAL ADMINISTRATIVE PROCEDURES

■ 1. The authority citation for part 1304 continues to read as:

Authority: 42 U.S.C. 9801 *et seq.*

■ 2. Add § 1304.17 to Subpart B to read as follows:

Subpart B—Designation Renewal

§ 1304.17 Flexibility for Head Start Designation Renewal Determinations in Certain Emergencies.

(a) In reviewing the relevant data as described in § 1304.15(b), if ACF determines that one or more data elements described in the conditions in section § 1304.11 is not available due to an emergency described in paragraph (b) of this section, ACF may make a designation renewal determination based on the data elements that are available.

(b) The emergencies are:

(1) A major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(2) An emergency declared by the President under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191).

(3) A public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d).

[FR Doc. 2020-26033 Filed 12-4-20; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200124-0029; RTID 0648-XA680]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2021 Red Snapper Private Angling Component Closures in Federal Waters off Texas

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces closures for the 2021 fishing season for the red snapper private angling component in the exclusive economic zone (EEZ) off Texas in the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational private angling component in the Gulf EEZ off Texas will close on January 1, 2021, until 12:01 a.m., local time, on June 1, 2021.

This closure is necessary to prevent the private angling component from exceeding the Texas regional management area annual catch limit (ACL) and to prevent overfishing of the Gulf red snapper resource.

DATES: This closure is effective at 12:01 a.m., local time, on January 1, 2021, until 12:01 a.m., local time, on June 1, 2021.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727-824-5305, email: Kelli.ODonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: The private angling component, and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL (recreational quota) between the components and established separate seasonal closures for the two components. On February 6, 2020, NMFS implemented Amendments 50 A-F to the FMP, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of red snapper in Federal waters of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocate a portion of the private angling ACL to each state, and each state is required to constrain landings to its allocation.

As described at 50 CFR 622.23(c), a Gulf state with an active delegation may request that NMFS close all, or an area of, Federal waters off that state to the harvest and possession of red snapper by private anglers. The state is required

to request the closure by letter to NMFS, providing dates and geographic coordinates for the closure. If the request is within the scope of the analysis in Amendment 50A, NMFS publishes a notice in the **Federal Register** implementing the closure for the fishing year. Based on the analysis in Amendment 50A, Texas may request a closure of all Federal waters off the state to allow a year-round fishing season in state waters. As described at 50 CFR 622.2, "off Texas" is defined as the waters in the Gulf west of a rhumb line from 29°32.1' N Lat., 93°47.7' W long. to 26°11.4' N Lat., 92°53' W long., which line is an extension of the boundary between Louisiana and Texas.

On November 20, 2020, NMFS received a request from the Texas Parks and Wildlife Department (TPWD) to close the EEZ off Texas to the red snapper private angling component during the 2021 fishing year. Texas requested that the closure be effective from January 1 through May 31, 2021. NMFS has determined that this request is within the scope of analysis contained within Amendment 50A, which analyzed the potential impacts of a closure of all Federal waters off Texas when a portion of the Texas quota may still be landed and is consistent with the Reef Fish FMP. As explained in Amendment 50A, Texas intends to maintain a year-round fishing season in state waters during which a part of Texas' ACL could be caught.

Therefore, the red snapper recreational private angling component in the Gulf EEZ off Texas will close at 12:01 a.m., local time, on January 1, 2021, until 12:01 a.m., local time, on June 1, 2021. This closure applies to all private-anglers (those on board vessels that have not been issued a valid charter vessel/headboat permit for Gulf reef fish) regardless of which state they are from or where they intend to land. Once the EEZ off Texas opens on June 1, 2021, TPWD will continue to monitor private recreational landings, and if necessary, will request that NMFS again close the EEZ in 2021 to ensure the Texas regional management area ACL is not exceeded.

On and after the effective dates of these closures in the EEZ off Texas, the

harvest and possession red snapper in the EEZ off Texas by the private angling component is prohibited and the bag and possession limits for the red snapper private angling component in the closed area is zero.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf red snapper and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is taken under 50 CFR 622.23(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action is based on the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to implement this action to close the Federal private angling component of the red snapper recreational sector in the EEZ off Texas constitute good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the area closure authority and the state-specific private angling ACLs has already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because a failure to implement the closure immediately may result an overage of the Texas ACL and less access to red snapper in state waters.

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

Dated: December 1, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020-26797 Filed 12-4-20; 8:45 am]

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Proposed Rules

Federal Register

Vol. 85, No. 235

Monday, December 7, 2020

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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AF65

Assessments, Amendments To Address the Temporary Deposit Insurance Assessment Effects of the Optional Regulatory Capital Transitions for Implementing the Current Expected Credit Losses Methodology

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation is seeking comment on a proposed rule that would amend the risk-based deposit insurance assessment system applicable to all large insured depository institutions (IDIs), including highly complex IDIs, to address the temporary deposit insurance assessment effects resulting from certain optional regulatory capital transition provisions relating to the implementation of the current expected credit losses (CECL) methodology. The proposal would amend the assessment regulations to remove the double counting of a specified portion of the CECL transitional amount or the modified CECL transition amount, as applicable (collectively, the CECL transitional amounts), in certain financial measures that are calculated using the sum of Tier 1 capital and reserves and that are used to determine assessment rates for large and highly complex IDIs. The proposal also would adjust the calculation of the loss severity measure to remove the double counting of a specified portion of the CECL transitional amounts for a large or highly complex IDI. This proposal would not affect regulatory capital or the regulatory capital relief provided in the form of transition provisions that allow banking organizations to phase in the effects of CECL on their regulatory capital ratios.

DATES: Comments must be received no later than January 6, 2021.

ADDRESSES: You may submit comments on the proposed rule using any of the following methods:

- *Agency Website:* <https://www.fdic.gov/regulations/laws/federal>. Follow the instructions for submitting comments on the agency website.
- *Email:* comments@fdic.gov. Include RIN 3064–AF65 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, 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 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal>.

FOR FURTHER INFORMATION CONTACT: Scott Ciardi, Chief, Large Bank Pricing, (202) 898–7079 or sciardi@fdic.gov; Ashley Mihalik, Chief, Banking and Regulatory Policy, (202) 898–3793 or amihalik@fdic.gov; Nefretete Smith, Counsel, (202) 898–6851 or nefsmith@fdic.gov; Sydney Mayer, Senior Attorney, (202) 898–3669 or smayer@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The Federal Deposit Insurance Act (FDI Act) requires that the FDIC establish a risk-based deposit insurance assessment system.¹ Pursuant to this requirement, the FDIC first adopted a risk-based deposit insurance assessment system effective in 1993 that applied to all IDIs.² The FDIC implemented this assessment system with the goals of making the deposit insurance system fairer to well-run institutions and encouraging weaker institutions to improve their condition, and thus, promote the safety and soundness of IDIs.³

In 2006, the FDIC adopted a final rule that created different risk-based

assessment systems for large and small IDIs that combined supervisory ratings with other risk measures to differentiate risk and determine assessment rates.⁴ In 2011, the FDIC amended the risk-based assessment system applicable to large IDIs to, among other things, better capture risk at the time the institution assumes the risk, to better differentiate risk among large IDIs during periods of good economic and banking conditions based on how they would fare during periods of stress or economic downturns, and to better take into account the losses that the FDIC may incur if a large IDI fails.⁵

The FDIC is required by statute to set deposit insurance assessments based on risk, and the FDIC's objective in setting forth this proposal is to ensure that banks are assessed in a manner that is fair and accurate. The primary objective of this proposal is to remove a double counting issue in several financial measures used to determine deposit insurance assessments for large and highly complex banks, which could result in a deposit insurance assessment rate for a large or highly complex bank that does not accurately reflect the bank's risk to the deposit insurance fund (DIF), all else equal. Specifically, the proposal would amend the assessment regulations to remove the double counting of a portion of the CECL transitional amounts, in certain financial measures used to determine deposit insurance assessments for large and highly complex banks. In particular, certain financial measures are calculated by summing Tier 1 capital, which includes the CECL transitional amounts, and reserves, which already reflects the implementation of CECL. As a result, a portion of the CECL transitional amounts is being double counted in these measures, which in turn affects assessment rates for large and highly complex banks. The proposal also would adjust the calculation of the loss severity measure to remove the double counting of a

⁴ See 71 FR 69282 (Nov. 30, 2006). Generally, large IDIs have \$10 billion or more in total assets and small IDIs have less than \$10 billion in total assets. See 12 CFR 327.8(e) and (f). As used in this proposed rule, the term "small bank" is synonymous with "small institution," the term "large bank" is synonymous with "large institution," and the term "highly complex bank" is synonymous with "highly complex institution," as the terms are defined in 12 CFR 327.8.

⁵ See 76 FR 10672 (Feb. 25, 2011).

¹ 12 U.S.C. 1817(b).

² 57 FR 45263 (Oct. 1, 1992).

³ As used in this proposed rule, the term "insured depository institution" has the same meaning as it is used in section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

portion of the CECL transitional amounts for a large or highly complex bank.

This proposal would amend the deposit insurance system applicable to large and highly complex banks only, and it would not affect regulatory capital or the regulatory capital relief provided in the form of transition provisions that allow banking organizations to phase in the effects of CECL on their regulatory capital ratios.⁶ Specifically, in calculating another measure used to determine assessment rates for all IDIs, the Tier 1 leverage ratio, the FDIC would continue to apply the CECL regulatory capital transition provisions, consistent with the regulatory capital relief provided to address concerns that despite adequate capital planning, unexpected economic conditions at the time of CECL adoption could result in higher-than-anticipated increases in allowances.⁷

The proposed amendments to the deposit insurance assessment system and any changes to reporting requirements pursuant to this proposal would be required only while the regulatory capital relief described above is reflected in the regulatory reports of banks.

II. Background

A. Deposit Insurance Assessments

The FDIC charges all IDIs an assessment amount for deposit insurance equal to the IDI's deposit insurance assessment base multiplied by its risk-based assessment rate.⁸ An IDI's assessment base and assessment rate are determined each quarter based on supervisory ratings and information collected in the Consolidated Reports of Condition and Income (Call Report) or the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), as appropriate. Generally, an IDI's assessment base equals its average consolidated total

assets minus its average tangible equity.⁹

An IDI's assessment rate is calculated using different methods based on whether the IDI is a small, large, or highly complex bank.¹⁰ Large and highly complex banks are assessed using a scorecard approach that combines CAMELS ratings and certain forward-looking financial measures to assess the risk that a large or highly complex bank poses to the DIF.¹¹ The score that each large or highly complex bank receives is used to determine its deposit insurance assessment rate. One scorecard applies to most large IDIs and another applies to highly complex banks. Both scorecards use quantitative financial measures that are useful in predicting a large or highly complex bank's long-term performance.¹²

As described in more detail below, the FDIC is proposing to amend the assessment regulations to remove the double counting of a portion of the CECL transitional amounts in the calculation of the loss severity measure and certain other financial measures that are calculated by summing Tier 1 capital and reserves, which are used to determine assessment rates for large and highly complex banks.

B. The Current Expected Credit Losses Methodology

In 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016–13, *Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments*.¹³ The ASU resulted in significant changes to credit loss accounting under U.S. generally accepted accounting principles (GAAP). The revisions to credit loss accounting

under GAAP included the introduction of CECL, which replaces the incurred loss methodology for financial assets measured at amortized cost. For these assets, CECL requires banking organizations to recognize lifetime expected credit losses and to incorporate reasonable and supportable forecasts in developing the estimate of lifetime expected credit losses, while also maintaining the current requirement that banking organizations consider past events and current conditions.

CECL allowances cover a broader range of financial assets than the allowance for loan and lease losses (ALLL) under the incurred loss methodology. Under the incurred loss methodology, the ALLL generally covers credit losses on loans held for investment and lease financing receivables, with additional allowances for certain other extensions of credit and allowances for credit losses on certain off-balance sheet credit exposures (with the latter allowances presented as liabilities).¹⁴ These exposures will be within the scope of CECL. In addition, CECL applies to credit losses on held-to-maturity (HTM) debt securities. ASU 2016–13 also introduces new requirements for available-for-sale (AFS) debt securities. The new accounting standard requires that a banking organization recognize credit losses on individual AFS debt securities through credit loss allowances, rather than through direct write-downs, as is currently required under U.S. GAAP. The credit loss allowances attributable to debt securities are separate from the credit loss allowances attributable to loans and leases.

C. The 2019 CECL Rule

Upon adoption of CECL, a banking organization will record a one-time adjustment to its credit loss allowances as of the beginning of its fiscal year of adoption equal to the difference, if any, between the amount of credit loss allowances required under the incurred loss methodology and the amount of credit loss allowances required under CECL. A banking organization's implementation of CECL will affect its retained earnings, deferred tax assets

¹⁴ "Other extensions of credit" includes trade and reinsurance receivables, and receivables that relate to repurchase agreements and securities lending agreements. "Off-balance sheet credit exposures" includes off-balance sheet credit exposures not accounted for as insurance, such as loan commitments, standby letters of credit, and financial guarantees. The FDIC notes that credit losses for off-balance sheet credit exposures that are unconditionally cancellable by the issuer are not recognized under CECL.

⁶ Banking organizations subject to the capital rule include national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Federal Reserve Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), but exclude certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans. See 12 CFR part 3 (Office of the Comptroller of the Currency); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC). See also 84 FR 4222 (February 14, 2019) and 85 FR 61577 (September 30, 2020).

⁷ See 84 FR 4225 (February 14, 2019).

⁸ See 12 CFR 327.3(b)(1).

⁹ See 12 CFR 327.5.

¹⁰ For assessment purposes, a large bank is generally defined as an institution with \$10 billion or more in total assets, a small bank is generally defined as an institution with less than \$10 billion in total assets, and a highly complex bank is generally defined as an institution that has \$50 billion or more in total assets and is controlled by a parent holding company that has \$500 billion or more in total assets, or is a processing bank or trust company. See 12 CFR 327.16(a) and (b).

¹¹ See 12 CFR 327.16(b); see also 76 FR 10672 (Feb. 25, 2011) and 77 FR 66000 (Oct. 31, 2012).

¹² See 76 FR 10688. The FDIC uses a different scorecard for highly complex IDIs because those institutions are structurally and operationally complex, or pose unique challenges and risks in case of failure. 76 FR 10695.

¹³ ASU 2016–13 covers measurement of credit losses on financial instruments and includes three subtopics within Topic 326: (i) Subtopic 326–10 Financial Instruments—Credit Losses—Overall; (ii) Subtopic 326–20: Financial Instruments—Credit Losses—Measured at Amortized Cost; and (iii) Subtopic 326–30: Financial Instruments—Credit Losses—Available-for-Sale Debt Securities.

(DTAs), allowances, and, as a result, its regulatory capital ratios.

In recognition of the potential for the implementation of CECL to affect regulatory capital ratios, on February 14, 2019, the FDIC, the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve System (Board) (collectively, the agencies) issued a final rule that revised certain regulations, including the agencies' regulatory capital regulations (capital rule),¹⁵ to account for the aforementioned changes to credit loss accounting under GAAP, including CECL (2019 CECL rule).¹⁶ The 2019 CECL rule includes a transition provision that allows banking organizations to phase in over a three-year period the day-one adverse effects of CECL on their regulatory capital ratios.

D. The 2020 CECL Rule

As part of the efforts to address the disruption of economic activity in the United States caused by the spread of coronavirus disease 2019 (COVID-19), on March 31, 2020, the agencies adopted a second CECL transition provision through an interim final rule.¹⁷ The agencies subsequently adopted a final rule (2020 CECL rule) on September 30, 2020, that is consistent with the interim final rule, with some clarifications and adjustments related to the calculation of the transition and the eligibility criteria for using the 2020 CECL transition provision.¹⁸ The 2020 CECL rule provides banking organizations that adopt CECL for purposes of GAAP (as in effect January 1, 2020), for a fiscal year that begins during the 2020 calendar year, the option to delay for up to two years an estimate of CECL's effect on regulatory capital, followed by a three-year transition period (*i.e.*, a five-year transition period in total).¹⁹ The 2020

CECL rule does not replace the three-year transition provision in the 2019 CECL rule, which remains available to any banking organization at the time that it adopts CECL.²⁰

E. Double Counting of a Portion of the CECL Transitional Amounts in Certain Financial Measures Used To Determine Assessments for Large and Highly Complex Banks

An increase in a banking organization's allowances, including those estimated under CECL, generally will reduce the banking organization's earnings or retained earnings, and therefore, its Tier 1 capital. For banks electing the 2019 CECL rule, the CECL transitional amount is the difference between the closing balance sheet amount of retained earnings for the fiscal year-end immediately prior to the bank's adoption of CECL (pre-CECL amount) and the bank's balance sheet amount of retained earnings as of the beginning of the fiscal year in which it adopts CECL (post-CECL amount). For banks electing the 2020 CECL rule transition provision, retained earnings are increased for regulatory capital calculation purposes by a modified CECL transitional amount that is adjusted to reflect changes in retained earnings due to CECL that occur during the first two years of the five-year transition period. Under the 2020 CECL rule, the change in retained earnings due to CECL is calculated by taking the change in reported adjusted allowances for credit losses (AACL)²¹ relative to the first day of the fiscal year in which CECL was adopted and applying a scaling multiplier of 25 percent during the first two years of the transition period. The resulting amount is added to the CECL transitional amount described above. Hence, the modified CECL transitional amount for banks electing the 2020 CECL rule is calculated on a quarterly basis during the first two years of the transition

period. The bank reflects that modified CECL transitional amount, which includes 100 percent of the day-one impact of CECL on retained earnings plus a portion of the difference between AACL reported in the most recent regulatory report and AACL as of the beginning of the fiscal year that the banking organization adopts CECL, in the transitional amount applied to retained earnings in regulatory capital calculations.²²

For banks electing the 2020 CECL rule transition provision that enter the third year of their transition period and for banks electing the three-year 2019 CECL rule transition provision, banks must calculate the transitional amount to phase into their retained earnings for purposes of their regulatory capital calculations over a three-year period. For banks electing the 2019 CECL rule, the CECL transitional amount of is the difference between the pre-CECL amount of retained earnings and the post-CECL amount of retained earnings. For banks electing the 2020 CECL rule that enter the third year of their transition, the modified CECL transitional amount is the difference between the bank's AACL at the end of the second year of the transition period and its AACL as of the beginning of the fiscal year of CECL adoption multiplied by 25 percent plus the CECL transitional amount described above. The CECL transitional amount or, at the end of the second year of the transition period for banks electing the 2020 CECL rule, the modified CECL transitional amount, is fixed and must be phased in over the three-year transition period or the last three years of the transition period, respectively, on a straight-line basis, 25 percent in the first year (or third year for banks electing the 2020 CECL rule), and an additional 25 percent of the transitional amount over each of the next two years.²³ At the beginning of the

¹⁵ 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

¹⁶ 84 FR 4222 (Feb. 14, 2019).

¹⁷ 85 FR 17723 (Mar. 31, 2020).

¹⁸ See 85 FR 61577 (Sept. 30, 2020).

¹⁹ A banking organization that is required to adopt CECL under GAAP in the 2020 calendar year, but chooses to delay use of CECL for regulatory reporting in accordance with section 4014 of the Coronavirus Aid Relief, and Economic Security Act (CARES Act), is also eligible for the 2020 CECL transition provision. The CARES Act (Pub. L. 116-136, 4014, 134 Stat. 281 (March 27, 2020)) provides banking organizations optional temporary relief from complying with CECL ending on the earlier of (1) the termination date of the current national emergency, declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) concerning COVID-19, or (2) December 31, 2020. If a banking organization chooses to revert to the incurred loss methodology pursuant to the CARES Act in any quarter in 2020, the banking organization would not apply any

transitional amounts in that quarter but would be allowed to apply the transitional amounts in subsequent quarters when the banking organization resumes use of CECL.

²⁰ See 85 FR 61578 (Sept. 30, 2020).

²¹ The 2019 CECL rule defined a new term for regulatory capital purposes, adjusted allowances for credit losses (AACL). The meaning of the term AACL for regulatory capital purposes is different from the meaning of the term allowances of credit losses (ACL) used in applicable accounting standards. The term allowance for credit losses as used by the FASB in ASU 2016-13 applies to both financial assets measured at amortized cost and AFS debt securities. In contrast, the AACL definition includes only those allowances that have been established through a charge against earnings or retained earnings. Under the 2019 CECL rule, the term AACL, rather than ALLL, applies to a banking organization that has adopted CECL.

²² See 85 FR 61580 (Sept. 30, 2020).

²³ Thus, when calculating regulatory capital, a bank electing the 2019 CECL rule transition provision would increase the retained earnings reported on its balance sheet by the applicable portion of its CECL transitional amount, *i.e.*, 75 percent of its CECL transitional amount during the first year of the transition period, 50 percent of its CECL transitional amount during the second year of the transition period, and 25 percent of its CECL transitional amount during the third year of the transition period. A bank electing the 2020 CECL rule transition provision would increase the retained earnings reported on its balance sheet by the applicable portion of its modified CECL transitional amount, *i.e.*, 100 percent of its modified CECL transitional amount during the first and second years of the transition period, 75 percent of its CECL modified transitional amount during the third year of the transition period, 50 percent of its modified CECL transitional amount during the fourth year of the transition period, and 25 percent

sixth year for banks electing the 2020 CECL rule, or the beginning of the fourth year for banks electing the 2019 CECL rule, the electing bank would have completely reflected in regulatory capital the day-one effects of CECL (plus, for banks electing the 2020 CECL rule, an estimate of CECL's effect on regulatory capital, relative to the incurred loss methodology's effect on regulatory capital, during the first two years of CECL adoption).²⁴

Certain financial measures that are used in the scorecard to determine assessment rates for large and highly complex banks are calculated using both Tier 1 capital and reserves. Tier 1 capital is reported in Call Report Schedule RC–R, Part I, item 26, and for banks that elect either the three-year transition provision contained in the 2019 CECL rule or the five-year transition provision contained in the 2020 CECL rule, Tier 1 capital includes (due to adjustments to the amount of retained earnings reported on the balance sheet) the applicable portion of the CECL transitional amount (or modified CECL transitional amount). For deposit insurance assessment purposes, reserves are calculated using the amount reported in Call Report Schedule RC, item 4.c, “Allowance for loan and lease losses.” For all banks that have adopted CECL, this Schedule RC line item reflects the allowance for credit losses on loans and leases.²⁵ The issue of double counting arises in certain financial measures used to determine assessment rates for large and highly complex banks that are calculated using both Tier 1 capital and reserves because the allowance for credit losses on loans and leases is included during the transition period in both reserves and, as a portion of the CECL or modified CECL transitional amount, Tier 1 capital. For banks that elect either the three-year transition provision contained in the 2019 CECL rule or the five-year transition provision contained in the 2020 CECL rule, the CECL transitional amounts, as defined in section 301 of the regulatory capital rules, additionally include the effect on retained earnings, net of tax effect, of establishing allowances for credit losses in accordance with the CECL methodology on HTM debt securities, other financial assets measured at amortized cost, and off-balance sheet

of its CECL transitional amount during the fifth year of the transition period.

²⁴ See 84 FR 4228 (Feb. 14, 2019) and 85 FR 61580 (Sept. 30, 2020).

²⁵ The allowance for credit losses on loans and leases held for investment also is reported in item 7, column A, of Call Report Schedule RI–B, Part II, Changes in Allowances for Credit Losses.

credit exposures as of the beginning of the fiscal year of adoption (plus, for banks electing the 2020 CECL rule, the change during the first two years of the transition period in reported AACLs for HTM debt securities, other financial assets measured at amortized cost, and off-balance sheet credit exposures relative to the balances of these AACLs as of the beginning of the fiscal year of CECL adoption multiplied by 25 percent). The applicable portions of the CECL transitional amounts attributable to allowances for credit losses on HTM debt securities, other financial assets measured at amortized cost, and off-balance sheet credit exposures are included in Tier 1 capital only and are not double counted with reserves for deposit insurance assessment purposes.

The CECL effective dates assigned by ASU 2016–13 as most recently amended by ASU No. 2019–10, the optional temporary relief from complying with CECL afforded by the CARES Act, and the transitions provided for under the 2019 CECL rule and 2020 CECL rule, provide that all banks will have completely reflected in regulatory capital the day-one effects of CECL (plus, if applicable, an estimate of CECL's effect on regulatory capital, relative to the incurred loss methodology's effect on regulatory capital, during the first two years of CECL adoption) by December 31, 2026. As a result, and as discussed below, the proposed amendments to the deposit insurance assessment system and any changes to reporting requirements pursuant to this proposal would be required only while the temporary regulatory capital relief is reflected in the regulatory reports of banks.

III. The Proposed Rule

A. Summary

In calculating certain measures used in the scorecard for determining deposit insurance assessment rates for large and highly complex banks, the FDIC is proposing to remove the applicable portions of the CECL transitional amounts added to retained earnings for regulatory capital purposes and attributable to the allowance for credit losses on loans and leases held for investment under the transitions provided for under the 2019 and 2020 CECL rules. Specifically, in certain scorecard measures which are calculated using the sum of Tier 1 capital and reserves, the FDIC would remove a specified portion of the CECL transitional amount (or modified CECL transitional amount) that is added to retained earnings for regulatory capital purposes when determining deposit

insurance assessment rates. The FDIC is also proposing to adjust the calculation of the loss severity measure to remove the double counting of a specified portion of the CECL transitional amounts for a large or highly complex bank.

Absent adjustments to the calculation of certain financial measures in the large and highly complex bank scorecards, the inclusion of the applicable portions of the CECL transitional amounts added to retained earnings for regulatory capital purposes and attributable to the allowance for credit losses on loans and leases held for investment in regulatory capital and the implementation of CECL in calculating reserves will result in temporary double counting of a portion of the CECL transitional amounts in select financial measures used to determine assessment rates for large and highly complex banks. For example, in the denominator of the higher-risk assets to Tier 1 capital and reserves ratio, the applicable portions of the CECL transitional amounts added to retained earnings for regulatory capital purposes and attributable to the allowance for credit losses on loans and leases held for investment would be included in Tier 1 capital, and these portions also would be reflected in the calculation of reserves using the allowance amount reported in Call Report Schedule RC, item 4.c. If left uncorrected, this temporary double counting could result in a deposit insurance assessment rate for a large or highly complex bank that does not accurately reflect the bank's risk to the DIF, all else equal.

In the following simplified, stylized example, illustrated in Table 1 below, consider a hypothetical large bank that has a CECL effective date of January 1, 2020, and elects a five-year transition.²⁶ On the closing balance sheet date immediately prior to adopting CECL

²⁶ This stylized example is included to illustrate the effect of the proposed rule and omits the effects of deferred tax assets on regulatory capital calculations, which are addressed in the agencies' capital rule, the 2019 CECL rule, and the 2020 CECL rule. The example reflects the first-quarter 2020 application by a hypothetical large bank (with no purchased credit-deteriorated assets) that has adopted the five-year CECL transition under the 2020 CECL rule and assumes that the full amount of the CECL transitional amount is attributable to the allowance for credit losses on loans and leases. The example does not reflect any changes over the course of the first quarterly reporting period in year 1 (*i.e.*, no changes in the amounts reported on the bank's balance sheet between January 1 and March 31, 2020, the end of the reporting period for the first quarter). As a consequence, the bank's modified CECL transitional amount as of March 31, 2020 equals its CECL transitional amount. See 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC). See also 84 FR 4222 (February 14, 2019) and 85 FR 61577 (September 30, 2020).

(i.e., December 31, 2019), the electing bank has \$1 million of ALLL and \$10 million of Tier 1 capital. On the opening balance sheet date immediately after adopting CECL (i.e., January 1, 2020), the electing bank has \$1.2 million of allowances for credit losses, of which the entire \$1.2 million qualifies as AACL for regulatory capital purposes and is attributable to the allowance for credit losses on loans and leases held for investment.²⁷ The bank would recognize the adoption of CECL as of January 1, 2020, by recording an increase in its allowances for credit losses, and in its AACL for regulatory capital purposes, of \$200,000, with a reduction in beginning retained earnings of \$200,000, which flows through and results in Tier 1 capital of \$9.8 million. For each of the quarterly reporting periods in year 1 of the five-

year transition period (i.e., 2020), the electing bank would increase the retained earnings reported on its balance sheet by \$200,000 for purposes of calculating its regulatory capital ratios, resulting in an increase in its Tier 1 capital of \$200,000 to \$10 million, all else equal.²⁸

In this example, in determining the hypothetical large bank's deposit insurance assessment rate, the bank's Tier 1 capital of \$10 million would include the \$200,000 addition to the bank's reported retained earnings due to the CECL transition (entirely attributable to the allowance for credit losses on loans and leases), and its reserves would equal \$1.2 million, the entire amount of which is attributable to the allowance for credit losses on loans and leases held for investment. Its combined Tier 1 capital and reserves

would equal \$11.2 million (\$10 million plus \$1.2 million), reflecting double counting of the \$200,000 applicable portion of the bank's CECL transitional amount attributable to the allowance for credit losses on loans and leases.²⁹

Under the proposal, for purposes of calculating assessments for large and highly complex banks, the FDIC would subtract \$200,000 from the denominator of financial measures that sum Tier 1 capital and reserves, since the amount of \$200,000 is incorporated in both Tier 1 capital (as the applicable portion of the CECL transitional amount in year one of the five-year transition period) and reserves in the denominator. The bank's adjusted Tier 1 capital and reserves would equal \$11 million. The FDIC also would adjust the calculation of the loss severity measure by \$200,000, as described below.

TABLE 1—STYLIZED EXAMPLE ¹ OF FIRST-QUARTER APPLICATION OF A FIVE-YEAR CECL TRANSITION IN CALCULATING TIER 1 CAPITAL AND RESERVES FOR DEPOSIT INSURANCE ASSESSMENT PURPOSES

In thousands	Dec. 31, 2019	Jan. 1, 2020
Reserves	\$1,000 (ALLL)	\$1,200 (AACL).
Tier 1 Capital	10,000	10,000.
Tier 1 Capital and Reserves (<i>current</i>)	11,000	11,200.
Applicable Portion of the CECL Transitional Amount .....	.....	200.
Tier 1 Capital and Reserves (<i>proposed</i>) .....	.....	11,000.

¹ This stylized example reflects the first-quarter application of a hypothetical bank that has adopted a five-year CECL transition under the 2020 CECL rule and assumes that the full amount of the CECL transitional amount is attributable to the allowance for credit losses on loans and leases. The example does not reflect any changes over the course of the first quarter of 2020 (i.e., no changes in the amounts reported on the bank's balance sheet between January 1 and March 31, 2020, the end of the reporting period for the first quarter). As a consequence, the bank's modified CECL transitional amount as of March 31, 2020, equals its CECL transitional amount. This stylized example omits the effects of deferred tax assets, which are addressed in the agencies' capital rule, the 2019 CECL rule, and the 2020 CECL rule.

This proposal would amend the deposit insurance system applicable to large and highly complex banks only, and would not affect regulatory capital or the regulatory capital relief provided under the 2019 CECL rule or 2020 CECL rule.³⁰ The FDIC would continue the application of the transition provisions provided for under the 2019 and 2020 CECL rules to the Tier 1 leverage ratio

used in determining deposit insurance assessment rates for all IDIs.

Temporary changes to the Call Report forms and instructions would be required to implement the proposed amendments to the assessment system to remove the double counting. These changes would be effectuated in coordination with the other member entities of the Federal Financial

Institutions Examination Council (FFIEC).³¹ Any changes to regulatory reporting requirements pursuant to this proposal would be required only while the regulatory capital relief is reflected in the regulatory reports of banks.

²⁷ While the CECL transitional amount is calculated using the difference between the closing balance sheet amount of retained earnings for the fiscal year-end immediately prior to a bank's adoption of CECL and the balance sheet amount of retained earnings as of the beginning of the fiscal year in which the bank adopts CECL, the FDIC calculates financial measures used to determine deposit insurance assessments using data reported as of each quarter end.

²⁸ Under the 2019 CECL rule, when calculating regulatory capital ratios during the first year of an electing bank's CECL adoption date, the bank must phase in 25 percent of the transitional amounts. The bank would phase in an additional 25 percent of the transitional amounts over each of the next two years so that the bank would have phased in 75 percent of the day-one adverse effects of adopting CECL during year three. At the beginning of the fourth year, the bank would have completely

reflected in regulatory capital the day-one effects of CECL. Under the 2020 CECL rule, the modified CECL transitional amount is calculated on a quarterly basis during the first two years of the transition period. See 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC). See also 84 FR 4222 (February 14, 2019) and 85 FR 61577 (September 30, 2020).

²⁹ In this stylized example, the entirety of the CECL transitional amount is attributable to the allowance for credit losses on loans and leases and it equals the modified CECL transitional amount during the first quarter of the transition period. The applicable portion of the CECL transitional amounts is the amount that is double counted in certain financial measures used to determine deposit insurance assessment rates and that the FDIC is proposing to remove from those financial measures. However, CECL transitional amounts may also include amounts attributable to allowances for

credit losses under CECL on HTM debt securities, other financial assets measured at amortized cost, and off-balance sheet credit exposures. Under the proposal, in determining a large or highly complex bank's deposit insurance assessment rate, the FDIC would continue to include in Tier 1 capital the applicable portion of any CECL transitional amounts attributable to allowances for credit losses on items other than loans and leases held for investment.

³⁰ See 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC). See also 84 FR 4222 (Feb. 14, 2019) and 85 FR 61577 (Sept. 30, 2020).

³¹ As discussed in the section on the Paperwork Reduction Act below, the FDIC will submit a request for one additional temporary item on the Call Report (FFIEC 031 and FFIEC 041 only) to make the proposed adjustments described below.

B. Adjustments to Certain Measures Used in the Scorecard Approach for Determining Assessments for Large and Highly Complex Banks

The FDIC is proposing to adjust the calculations of certain financial measures used to determine deposit insurance assessment rates for large and highly complex banks to remove the applicable portions of the CECL transitional amounts added to retained earnings that is attributable to the allowance for credit losses on loans and leases held for investment. The FDIC is proposing to remove this part of the CECL transitional amounts because, for large and highly complex banks that have adopted CECL, the measure of reserves used in the scorecard is the allowance for credit losses on loans and leases reported in Call Report Schedule RC, item 4.c.

This amount, which would be reported in a new line item in Schedule RC—O only on the FFIEC 031 and FFIEC 041 versions of the Call Report, would be removed from scorecard measures that are calculated using the sum of Tier 1 capital and reserves, as described in more detail below. The proposal also would adjust the calculation of the loss severity measure to remove the double counting by removing the applicable portions of the CECL transitional amounts added to retained earnings for regulatory capital purposes and attributable to the allowance for credit losses on loans and leases held for investment for large and highly complex banks.

While the FDIC recognizes that by the anticipated effective date of any final rule promulgated by this proposal, numerous large and highly complex banks will have implemented CECL and many will have elected the transition provided under either the 2019 CECL rule or 2020 CECL rule, the FDIC would not make retroactive adjustments to prior quarterly assessments.

1. Credit Quality Measure

The score for the credit quality measure, applicable to large and highly complex banks, is the greater of (1) the ratio of criticized and classified items to Tier 1 capital and reserves score or (2) the ratio of underperforming assets to Tier 1 capital and reserves score.³² The double counting results in lower ratios and a credit quality measure that reflects less risk than a bank actually poses to the DIF. The FDIC is proposing to adjust the denominator, Tier 1 capital and reserves, used in both ratios by removing the applicable portions of the

CECL transitional amounts added to retained earnings for regulatory capital purposes and attributable to the allowance for credit losses on loans and leases held for investment.

2. Concentration Measure

For large banks, the concentration measure is the higher of (1) the ratio of higher-risk assets to Tier 1 capital and reserves or (2) the growth-adjusted portfolio concentration measure. The growth-adjusted portfolio concentration measure includes the ratio of concentration levels for several loan portfolios to Tier 1 capital and reserves.

For highly complex banks, the concentration measure is the highest of three measures: (1) The ratio of higher-risk assets to Tier 1 capital and reserves, (2) the ratio of top 20 counterparty exposures to Tier 1 capital and reserves, or (3) the ratio of the largest counterparty exposure to Tier 1 capital and reserves.³³

The double counting results in lower ratios and a concentration measure that reflects less risk than a bank actually poses to the DIF. The FDIC is proposing to adjust the denominator, Tier 1 capital and reserves, used in each of these ratios by removing the applicable portions of the CECL transitional amounts added to retained earnings for regulatory capital purposes and attributable to the allowance for credit losses on loans and leases held for investment.

3. Loss Severity Measure

The loss severity measure estimates the relative magnitude of potential losses to the DIF in the event of an IDI's failure.³⁴ In calculating this measure, the FDIC applies a standardized set of assumptions based on historical failures regarding liability runoffs and the recovery value of asset categories to simulate possible losses to the FDIC, reducing capital and assets until the Tier 1 leverage ratio declines to 2 percent. The double counting results in a greater reduction of assets during the capital reduction phase and therefore a lower resolution value of assets at the time of failure, which in turn results in a higher loss severity measure that reflects more risk than a bank actually poses to the DIF. The FDIC is proposing to adjust the calculation of the capital adjustment in the loss severity measure to remove the double counting of the applicable portion of the CECL transitional amounts added to retained

earnings for regulatory capital purposes and attributable to the allowance for credit losses on loans and leases held for investment for both large and highly complex banks.³⁵

Question 1: The FDIC invites comment on its proposal to amend the assessment regulations to remove the double counting of a part of the CECL transitional amounts due to the inclusion of this amount in certain financial measures used to determine deposit insurance assessments for large and highly complex banks, which could arise when banks elect the transition provision contained in either the 2019 CECL rule or the 2020 CECL rule.

C. Other Conforming Amendments to the Assessment Regulations

The FDIC is proposing to make conforming amendments to the FDIC's assessment regulations to effectuate the adjustments described above. These conforming amendments would ensure that the proposed adjustments to the financial measures used to calculate a large or highly complex bank's assessment rate are properly incorporated into the assessment regulations.

D. Proposed Regulatory Reporting Changes

A bank electing a transition under either the 2019 CECL rule or the 2020 CECL rule must indicate its election to use the 3-year 2019 or the 5-year 2020 CECL transition provision in Call Report Schedule RC—R, Part I, item 2.a. In addition, such an electing bank must report the applicable portions of the transitional amounts under the 2019 CECL rule or the 2020 CECL rule in the affected Call Report items during the transition period. For example, an electing bank would add the applicable portion of the CECL transitional amount (or the modified CECL transitional amount) when calculating the amount of retained earnings it would report in Schedule RC—R, Part I, item 2, of the Call Report.³⁶

³⁵ The loss severity measure is an average loss severity ratio for the three most recent quarters of data available. It is anticipated that any temporary reporting changes effectuated pursuant to this proposal would be implemented no earlier than the first applicable reporting period following the anticipated effective date of any final rule promulgated by this proposal. As such, the FDIC would adjust the calculation of the loss severity measure to remove the double counting of the specified portion of the CECL transitional amounts for one of the three quarters averaged in the first reporting period following the effective date, for two of the three quarters averaged in the second reporting period following the effective date, and for all three quarters averaged in all subsequent reporting periods, as applicable.

³⁶ See 84 FR 4227 and 85 FR 17726.

³³ See Appendix A to subpart A of 23 CFR 327.

³⁴ Appendix D to subpart A of 12 CFR 327 describes the calculation of the loss severity measure.

³² See 12 CFR 327.16(b)(ii)(A)(2)(iv).

In calculating certain measures used in the scorecard approach for determining deposit insurance assessments for large and highly complex banks, the FDIC is proposing to remove a specified portion of the CECL transitional amounts added to retained earnings under the transitions provided for under the 2020 and 2019 CECL rules. Specifically, in certain measures used in the scorecard approach for determining assessments for large and highly complex banks, the FDIC would remove the applicable portion of the CECL transitional amount (or modified CECL transitional amount) added to retained earnings for regulatory capital purposes (Call Report Schedule RC-R, Part I, Item 2), attributable to the allowance for credit losses on loans and leases held for investment and included in the amount reported on the Call Report balance sheet in Schedule RC, item 4.c.

However, large and highly complex banks that have elected a CECL transition provision do not currently report these specific portions of the CECL transitional amounts in the Call Report. Thus, implementing the proposed amendments to the risk-based deposit insurance assessment system applicable to large and highly complex banks would require temporary changes to the reporting requirements applicable to the Call Report and its related instructions. These reporting changes would be proposed and effectuated in coordination with the other member entities of the FFIEC. As previously described, any changes to reporting requirements for large and highly complex banks pursuant to this proposal would be required only while the temporary relief is reflected in banks' regulatory reports.

E. Expected Effects

The proposed rule would remove the applicable portions of the CECL transitional amounts added to retained earnings for regulatory capital purposes and attributable to the allowance for credit losses on loans and leases held for investment from certain financial measures used in the scorecards that determine deposit insurance assessment rates for large and highly complex banks. Absent the proposed rule, this amount would be temporarily double counted and could result in a deposit insurance assessment rate for a large or highly complex bank that does not accurately reflect the bank's risk to the DIF, all else equal. Furthermore, the double counting inherent in the regulation could result in inequitable deposit insurance assessments, as a large or highly complex bank that has not yet implemented CECL or that does

not utilize a transition provision could pay a higher or lower assessment rate than a bank that has implemented CECL and utilizes a transition provision, even if both banks pose equal risk to the DIF. The FDIC estimates that the majority of large and highly complex banks are currently paying a lower rate as a direct result of the double counting. However, the FDIC also estimates that a few banks are currently paying a higher rate than they otherwise would pay if the issue of double counting is corrected. The FDIC estimates that the rate these latter banks are paying is higher by only a *de minimis* amount, and occurs where the double counting on the loss severity measure more than offsets the effect of double counting on the other scorecard measures that are calculated using the sum of Tier 1 capital and reserves.

Based on FDIC data as of June 30, 2020, the FDIC estimates that this double counting could be resulting in approximately \$55 million in annual foregone assessment revenue, or 0.048 percent of the DIF balance as of that date. This estimate includes the majority of large and highly complex banks that are paying a lower rate due to the double counting and the banks paying a higher rate, compared to if the issue of double counting is corrected. The FDIC expects this estimated amount of foregone assessment revenue to increase in the near-term as additional large and highly complex banks adopt CECL, to the extent those large and highly complex banks elect to apply a transition. This amount also may increase in the near term as large and highly complex banks electing the 2020 CECL rule include in their modified CECL transitional amounts an estimate of CECL's effect on regulatory capital, relative to the incurred loss methodology's effect on regulatory capital, during the first two years of CECL adoption. As of June 30, 2020, the FDIC estimates that 101 of 138 large and highly complex banks had implemented CECL, and that 94 had elected a transition provided under either the 2019 CECL rule or the 2020 CECL rule. As banks phase out the transitional amounts over time, the assessment effect also would decline. As described previously, the optional temporary relief from CECL afforded by the CARES Act, and the transitions provided for under the 2019 CECL rule and 2020 CECL rule, provide that all banks will have completely reflected in regulatory capital the day-one effects of CECL (plus, if applicable, an estimate of CECL's effect on regulatory capital, relative to the incurred loss methodology's effect on regulatory

capital, during the first two years of CECL adoption) by December 31, 2026, thereby eliminating the double counting effects from the scorecard for large and highly complex banks. These above estimates are subject to uncertainty given differing CECL implementation dates and the option for large and highly complex banks to choose between the transitions offered under the 2019 CECL rule or the 2020 CECL rule, or to recognize the full impact of CECL on regulatory capital upon implementation.

The proposed rule could pose some additional regulatory costs for large and highly complex banks that elect a transition under either the 2019 CECL rule or the 2020 CECL rule associated with changes to internal systems or processes, or changes to reporting requirements. It is the FDIC's understanding that banks already calculate the portion of the CECL transitional amount (or modified CECL transitional amount) added to retained earnings for regulatory capital purposes that is attributable to the allowance for credit losses on loans and leases held for investment, for internal purposes. As such, the FDIC anticipates that the proposed addition of this temporary item to the Call Report would not impose significant additional burden and any additional costs are likely to be *de minimis*.

F. Alternatives Considered

The FDIC considered the reasonable and possible alternatives described below. The FDIC is required by statute to set deposit insurance assessments based on risk, and the FDIC's objective in setting forth the current proposal is to ensure that banks are assessed in a manner that is fair and accurate. On balance, the FDIC believes the current proposal would adjust for double counting of the applicable portion of the CECL transitional amounts attributable to allowances for credit losses on loans and leases held for investment in certain financial measures used to determine deposit insurance assessment rates for large and highly complex banks in the most appropriate, accurate, and straightforward manner.

One alternative would be to leave in place the current assessment regulations. Under this alternative, the applicable portions of the CECL transitional amounts would be automatically and fully included in both retained earnings as reported for regulatory capital purposes (affecting Tier 1 capital) and reserves, resulting in double counting of the applicable portions of these transitional amounts attributable to allowances for credit losses on loans and leases held for

investment in certain financial measures that are used to determine deposit insurance assessment rates for large and highly complex banks. As a result, a large or highly complex bank could pay a deposit insurance assessment rate that does not accurately reflect the bank's risk to the DIF, all else equal.

Furthermore, this double counting could result in inequitable deposit insurance assessments, as a large or highly complex bank that has not yet implemented CECL or that does not utilize a transition provision could pay a higher or lower assessment rate than a bank that has implemented CECL and utilizes a transition provision, even if both banks pose equal risk to the DIF. Based on data as of June 30, 2020, the DIF would receive approximately \$55 million less annual income than it would have received but for the double counting of parts of the CECL transitional amounts in the scorecard.

The FDIC also considered a second alternative, using a proxy measure based on existing data items on the Call Report to remove the effect of double counting on a large or highly complex bank's deposit insurance assessments. Specifically, the FDIC could use the difference between retained earnings reported on Schedule RC (item 26.a.) and Schedule RC-R (Part I, item 2.) to approximate the amount double counted. This proxy, however, would provide an estimate of the applicable portion of the full CECL transitional amount (or modified CECL transitional amount) rather than the applicable portion of the CECL transitional amount (or modified CECL transitional amount) added retained earnings for regulatory capital purposes and attributable to the allowance for credit losses on loans and leases held for investment, which is the amount the current proposal would remove from certain financial measures used to determine deposit insurance assessment rates for large and highly complex banks. This proxy would include the CECL transitional amounts attributable to establishing allowances for credit losses under CECL on loans and leases held for investment through a charge against retained earnings as of the adoption date of CECL as well as the amounts attributable to establishing, in the same manner as of the same date, allowances for credit losses under CECL on HTM debt securities, other financial assets measured at amortized cost, and off-balance sheet credit exposures. Since the proxy could result in the FDIC reducing Tier 1 capital and reserves by an amount that is greater than the amount double counted, it could harm banks with large reserves for HTM debt

securities, other financial assets measured at amortized cost, and off-balance sheet credit exposures by inflating such a bank's credit quality and concentration measures in the scorecards for large and highly complex banks. As a result, the proxy could result in the FDIC applying an adjustment amount that is different from the actual applicable portion of a bank's CECL transitional amount (or modified CECL transitional amount) that was added to retained earnings for regulatory capital purposes and is attributable to the allowance for credit losses on loans and leases held for investment. Thus, applying such an adjustment amount could result in a deposit insurance assessment rate that does not accurately reflect a large or highly complex bank's risk to the DIF, all else equal. The amount by which the proxy measure might differ from the applicable portion of a bank's CECL transitional amount (or modified CECL transitional amount) added to retained earnings for regulatory capital purposes that is attributable to the allowance for credit losses on loans and leases held for investment would vary by bank. While this amount may not be significant in most cases, the FDIC expects that using the proxy would generally result in higher assessments for most banks.

Furthermore, as described above, it is the FDIC's understanding that banks already calculate the applicable portion of the CECL transitional amount (or modified CECL transitional amount) added to retained earnings for regulatory capital purposes and attributable to the allowance for credit losses on loans and leases held for investment, for internal purposes, and as such, the FDIC anticipates that the proposed addition of this temporary item to the Call Report would not impose significant additional burden. The FDIC believes that temporarily collecting this item on the Call Report and using this item to adjust for double counting of a portion of the CECL transitional amounts in certain financial measures used to determine deposit insurance assessments for large and highly complex banks would ensure that banks are assessed in a manner that is fair and accurate, all else equal.

Question 2: The FDIC invites comment on the reasonable and possible alternatives described in this proposed rule. What are other reasonable and possible alternatives that the FDIC should consider?

G. Comment Period, Effective Date, and Application Date

The FDIC is issuing this proposal with a 30-day comment period. Following the comment period, the FDIC expects to issue a final rule with an effective date of April 1, 2021, and applicable to the second quarterly assessment period of 2021 (*i.e.*, April 1–June 30, 2021). The 30-day comment period, along with the expected effective date and the proposed application date, would ensure that the temporary effects of the double counting of the applicable portions of the CECL transitional amounts in select financial measures used in the scorecard approach for determining assessments for large and highly complex banks are corrected, beginning with the second quarterly assessment period of 2021.

IV. Request for Comment

The FDIC is requesting comment on all aspects of the notice of proposed rulemaking, in addition to the specific requests for comment above.

V. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.³⁷ However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets of less than or equal to \$600 million.³⁸ Certain types of rules, such as rules of particular applicability relating to rates, corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of "rule" for purposes of

³⁷ 5 U.S.C. 601 *et seq.*

³⁸ The SBA defines a small banking organization as having \$600 million or less in assets, where an organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended, effective August 19, 2019). In its determination, the SBA "counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for the purposes of RFA.

the RFA.³⁹ Because the proposed rule relates directly to the rates imposed on IDIs for deposit insurance and to the deposit insurance assessment system that measures risk and determines each bank’s assessment rate, the proposed rule is not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

Based on Call Report data as of June 30, 2020, the FDIC insures 5,075 depository institutions, of which 3,665 are defined as small entities by the terms of the RFA.⁴⁰ The proposed rule, however, would apply only to institutions with \$10 billion or greater in total assets. Consequently, small entities for purposes of the RFA will experience no significant economic impact should the FDIC implement the proposal in a final rule.

B. Riegle Community Development and Regulatory Improvement Act

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date

on which the regulations are published in final form, with certain exceptions, including for good cause.⁴¹ The requirements of RCDRIA will be considered as part of the overall rulemaking process, and the FDIC invites comments that will further inform its consideration of RCDRIA.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.⁴² The FDIC’s OMB control numbers for its assessment regulations are 3064–0057, 3064–0151, and 3064–0179. The proposed rule does not revise any of these existing assessment information collections pursuant to the PRA and consequently, no submissions in connection with these OMB control numbers will be made to the OMB for review. However, the proposed rule affects the agencies’ current information collections for the Call Report (FFIEC 031 and FFIEC 041, but not FFIEC 051). The agencies’ OMB control numbers for the Call Reports are: OCC OMB No. 1557–0081; Board OMB No. 7100–0036; and FDIC OMB No. 3064–0052. Proposed changes to the Call Report forms and instructions will be addressed in a separate **Federal Register** notice.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act⁴³ requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invites your comments on how to make this proposed rule easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?
- Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817–19, 1821.

■ 2. In Appendix A to Subpart A, amend the table under section heading, “VI. Description of Scorecard Measures,” by:

- a. Redesignating footnotes 2 as 3, 3 as 4, 4 as 5, and 5 as 7;
- b. Adding a new footnote 2 after various measures described in the table; and
- c. Adding a new footnote 6 after “Potential Losses/Total Domestic Deposits (Loss Severity Measure).”

The revisions and additions read as follows:

Appendix A to Subpart A of Part 327—Method To Derive Pricing Multipliers and Uniform Amount

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VI. DESCRIPTION OF SCORECARD MEASURES

Scorecard measures ¹	Description
* * * * *	
Concentration Measure for Large Insured depository institutions (excluding Highly Complex Institutions).	The concentration score for large institutions is the higher of the following two scores:

³⁹ 5 U.S.C. 601.

⁴⁰ FDIC Call Report data, June 30, 2020.

⁴¹ 5 U.S.C. 553(b)(B).

5 U.S.C. 553(d).

5 U.S.C. 601 *et seq.*

5 U.S.C. 801 *et seq.*

5 U.S.C. 801(a)(3).

5 U.S.C. 804(2).

5 U.S.C. 808(2).

12 U.S.C. 4802(a).

12 U.S.C. 4802(b).

⁴² 4 U.S.C. 3501–3521.

⁴³ 12 U.S.C. 4809.

VI. DESCRIPTION OF SCORECARD MEASURES—Continued

Scorecard measures ¹	Description
(1) Higher-Risk Assets/Tier 1 Capital and Reserves ² .	Sum of construction and land development (C&D) loans (funded and unfunded), higher-risk C&I loans (funded and unfunded), nontraditional mortgages, higher-risk consumer loans, and higher-risk securitizations divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the ratio.
(2) Growth-Adjusted Portfolio Concentrations ² .	The measure is calculated in the following steps:
	* * * * *
Concentration Measure for Highly Complex Institutions.	Concentration score for highly complex institutions is the highest of the following three scores:
(1) Higher-Risk Assets/Tier 1 Capital and Reserves ² .	Sum of C&D loans (funded and unfunded), higher-risk C&I loans (funded and unfunded), nontraditional mortgages, higher-risk consumer loans, and higher-risk securitizations divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the measure.
(2) Top 20 Counterparty Exposure/Tier 1 Capital and Reserves ² .	Sum of the 20 largest total exposure amounts to counterparties divided by Tier 1 capital and reserves. The total exposure amount is equal to the sum of the institution's exposure amounts to one counterparty (or borrower) for derivatives, securities financing transactions (SFTs), and cleared transactions, and its gross lending exposure (including all unfunded commitments) to that counterparty (or borrower). A counterparty includes an entity's own affiliates. Exposures to entities that are affiliates of each other are treated as exposures to one counterparty (or borrower). Counterparty exposure excludes all counterparty exposure to the U.S. Government and departments or agencies of the U.S. Government that is unconditionally guaranteed by the full faith and credit of the United States. The exposure amount for derivatives, including OTC derivatives, cleared transactions that are derivative contracts, and netting sets of derivative contracts, must be calculated using the methodology set forth in 12 CFR 324.34(b), but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies the requirements of 12 CFR 324.10(c)(4)(ii)(C)(1)(ii) and (iii) and 324.10(c)(4)(ii)(C)(3) through (7). The exposure amount associated with SFTs, including cleared transactions that are SFTs, must be calculated using the standardized approach set forth in 12 CFR 324.37(b) or (c). For both derivatives and SFT exposures, the exposure amount to central counterparties must also include the default fund contribution. ³
(3) Largest Counterparty Exposure/Tier 1 Capital and Reserves ² .	The largest total exposure amount to one counterparty divided by Tier 1 capital and reserves. The total exposure amount is equal to the sum of the institution's exposure amounts to one counterparty (or borrower) for derivatives, SFTs, and cleared transactions, and its gross lending exposure (including all unfunded commitments) to that counterparty (or borrower). A counterparty includes an entity's own affiliates. Exposures to entities that are affiliates of each other are treated as exposures to one counterparty (or borrower). Counterparty exposure excludes all counterparty exposure to the U.S. Government and departments or agencies of the U.S. Government that is unconditionally guaranteed by the full faith and credit of the United States. The exposure amount for derivatives, including OTC derivatives, cleared transactions that are derivative contracts, and netting sets of derivative contracts, must be calculated using the methodology set forth in 12 CFR 324.34(b), but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies the requirements of 12 CFR 324.10(c)(4)(ii)(C)(1)(ii) and (iii) and 324.10(c)(4)(ii)(C)(3) through (7). The exposure amount associated with SFTs, including cleared transactions that are SFTs, must be calculated using the standardized approach set forth in 12 CFR 324.37(b) or (c). For both derivatives and SFT exposures, the exposure amount to central counterparties must also include the default fund contribution. ³
	* * * * *
Credit Quality Measure	The credit quality score is the higher of the following two scores:
(1) Criticized and Classified Items/Tier 1 Capital and Reserves ² .	Sum of criticized and classified items divided by the sum of Tier 1 capital and reserves. Criticized and classified items include items an institution or its primary federal regulator have graded "Special Mention" or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments. ⁴ Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions.
(2) Underperforming Assets/Tier 1 Capital and Reserves ² .	Sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.
	* * * * *
Balance Sheet Liquidity Ratio	Sum of cash and balances due from depository institutions, federal funds sold and securities purchased under agreements to resell, and the market value of available for sale and held to maturity agency securities (excludes agency mortgage-backed securities but includes all other agency securities issued by the U.S. Treasury, U.S. government agencies, and U.S. government-sponsored enterprises) divided by the sum of federal funds purchased and repurchase agreements, other borrowings (including FHLB) with a remaining maturity of one year or less, 5 percent of insured domestic deposits, and 10 percent of uninsured domestic and foreign deposits. ⁵
Potential Losses/Total Domestic Deposits (Loss Severity Measure) ⁶ .	Potential losses to the DIF in the event of failure divided by total domestic deposits. Appendix D describes the calculation of the loss severity measure in detail.

VI. DESCRIPTION OF SCORECARD MEASURES—Continued

Scorecard measures ¹	Description
Market Risk Measure for Highly Complex Institutions.	The market risk score is a weighted average of the following three scores:
* * * * *	
(2) Market Risk Capital/Tier 1 Capital.	Market risk capital divided by Tier 1 capital. ⁷
* * * * *	

¹ The FDIC retains the flexibility, as part of the risk-based assessment system, without the necessity of additional notice-and-comment rule-making, to update the minimum and maximum cutoff values for all measures used in the scorecard. The FDIC may update the minimum and maximum cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio in order to maintain an approximately similar distribution of higher-risk assets to Tier 1 capital and reserves ratio scores as reported prior to April 1, 2013, or to avoid changing the overall amount of assessment revenue collected. 76 FR 10672, 10700 (February 25, 2011). The FDIC will review changes in the distribution of the higher-risk assets to Tier 1 capital and reserves ratio scores and the resulting effect on total assessments and risk differentiation between banks when determining changes to the cutoffs. The FDIC may update the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio more frequently than annually. The FDIC will provide banks with a minimum one quarter advance notice of changes in the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio with their quarterly deposit insurance invoice.

² The applicable portions of the current expected credit loss methodology (CECL) transitional amounts attributable to the allowance for credit losses on loans and leases held for investment and added to retained earnings for regulatory capital purposes pursuant to the regulatory capital regulations, as they may be amended from time to time (12 CFR part 3, 12 CFR part 217, 12 CFR part 324, 85 FR 61577 (Sept. 30, 2020), and 84 FR 4222 (Feb. 14, 2019)), will be removed from the sum of Tier 1 capital and reserves.

³ SFTs include repurchase agreements, reverse repurchase agreements, security lending and borrowing, and margin lending transactions, where the value of the transactions depends on market valuations and the transactions are often subject to margin agreements. The default fund contribution is the funds contributed or commitments made by a clearing member to a central counterparty's mutualized loss sharing arrangement. The other terms used in this description are as defined in 12 CFR part 324, subparts A and D, unless defined otherwise in 12 CFR part 327.

⁴ A marked-to-market counterparty position is equal to the sum of the net marked-to-market derivative exposures for each counterparty. The net marked-to-market derivative exposure equals the sum of all positive marked-to-market exposures net of legally enforceable netting provisions and net of all collateral held under a legally enforceable CSA plus any exposure where excess collateral has been posted to the counterparty. For purposes of the Criticized and Classified Items/Tier 1 Capital and Reserves definition a marked-to-market counterparty position less any credit valuation adjustment can never be less than zero.

⁵ Deposit runoff rates for the balance sheet liquidity ratio reflect changes issued by the Basel Committee on Banking Supervision in its December 2010 document, "Basel III: International Framework for liquidity risk measurement, standards, and monitoring," <http://www.bis.org/publ/bcbs188.pdf>.

⁶ The applicable portions of the CECL transitional amounts attributable to the allowance for credit losses on loans and leases held for investment and added to retained earnings for regulatory capital purposes will be removed from the calculation of the loss severity measure.

⁷ Market risk is defined in 12 CFR 324.202.

* * * * *

■ 3. In Appendix C to Subpart A, revise the text under section heading, "I. Concentration Measures," to read as follows:

Appendix C to Subpart A of Part 327—Description of Concentration Measures

I. Concentration Measures

The concentration score for large banks is the higher of the higher-risk assets to Tier 1 capital and reserves score or the growth-adjusted portfolio concentrations score.¹ The concentration score for highly complex institutions is the highest of the higher-risk assets to Tier 1 capital and reserves score, the Top 20 counterparty exposure to Tier 1 capital and reserves score, or the largest counterparty to Tier 1 capital and reserves score.² The higher-risk assets to Tier 1 capital

¹ For the purposes of this Appendix, the term "bank" means insured depository institution.

² As described in Appendix A to this subpart, the applicable portions of the current expected credit loss methodology (CECL) transitional amounts attributable to the allowance for credit losses on loans and leases held for investment and added to retained earnings for regulatory capital purposes pursuant to the regulatory capital regulations, as they may be amended from time to time (12 CFR part 3, 12 CFR part 217, 12 CFR part 324, 85 FR 61577 (Sept. 30, 2020), and 84 FR 4222 (Feb. 14, 2019)), will be removed from the sum of Tier 1 capital and reserves throughout the large and highly

and reserves ratio and the growth-adjusted portfolio concentration measure are described herein.

* * * * *

■ 4. In Appendix D to Subpart A, revise the text under section heading, "Appendix D to Subpart A of Part 327—Description of the Loss Severity Measure," to add a new footnote 3. The revision and addition read as follows:

Appendix D to Subpart A of Part 327—Description of the Loss Severity Measure

The loss severity measure applies a standardized set of assumptions to an institution's balance sheet to measure possible losses to the FDIC in the event of an institution's failure. To determine an institution's loss severity rate, the FDIC first applies assumptions about uninsured deposit and other unsecured liability runoff, and growth in insured deposits, to adjust the size and composition of the institution's liabilities. Assets are then reduced to match any reduction in liabilities.¹ The institution's

complex bank scorecards, including in the ratio of Higher-Risk Assets to Tier 1 Capital and Reserves, the Growth-Adjusted Portfolio Concentrations Measure, the ratio of Top 20 Counterparty Exposure to Tier 1 Capital and Reserves, and the Ratio of Largest Counterparty Exposure to Tier 1 Capital and Reserves.

asset values are then further reduced so that the Leverage ratio reaches 2 percent.^{2,3} In both cases, assets are adjusted pro rata to preserve the institution's asset composition. Assumptions regarding loss rates at failure for a given asset category and the extent of secured liabilities are then applied to estimated assets and liabilities at failure to determine whether the institution has enough unencumbered assets to cover domestic deposits. Any projected shortfall is divided by current domestic deposits to obtain an end-of-period loss severity ratio. The loss severity measure is an average loss severity ratio for the three most recent quarters of data available.

* * * * *

■ 5. In Appendix E to subpart A, amend Table E.2 by:

- a. Redesignating footnote 1 after "Credit Quality Measure" as 2;
- b. Adding a new footnote 1; and

* * * * *

³ The applicable portions of the current expected credit loss methodology (CECL) transitional amounts attributable to the allowance for credit losses on loans and leases held for investment and added to retained earnings for regulatory capital purposes pursuant to the regulatory capital regulations, as they may be amended from time to time (12 CFR part 3, 12 CFR part 217, 12 CFR part 324, 85 FR 61577 (Sept. 30, 2020), and 84 FR 4222 (Feb. 14, 2019)), will be removed from the calculation of the loss severity measure.

■ c. Adding footnote 2 after “Market Risk Measure for Highly Complex Institutions”.

The revisions and additions read as follows:

TABLE E.2—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR LARGE OR HIGHLY COMPLEX INSTITUTIONS

Scorecard measures ¹	Description	Exclusions
Credit Quality Measure ²	The credit quality score is the higher of the following two scores:	
Market Risk Measure for Highly Complex Institutions ² .	The market risk score is a weighted average of the following three scores:	

¹ The applicable portions of the current expected credit loss methodology (CECL) transitional amounts attributable to the allowance for credit losses on loans and leases held for investment and added to retained earnings for regulatory capital purposes pursuant to the regulatory capital regulations, as they may be amended from time to time (12 CFR part 3, 12 CFR part 217, 12 CFR part 324, 85 FR 61577 (Sept. 30, 2020), and 84 FR 4222 (Feb. 14, 2019)), will be removed from the sum of Tier 1 capital and reserves throughout the large and highly complex bank scorecards, including in the ratio of Higher-Risk Assets to Tier 1 Capital and Reserves, the Growth-Adjusted Portfolio Concentrations Measure, the ratio of Top 20 Counterparty Exposure to Tier 1 Capital and Reserves, the Ratio of Largest Counterparty Exposure to Tier 1 Capital and Reserves, the ratio of Criticized and Classified Items to Tier 1 Capital and Reserves, and the ratio of Underperforming Assets to Tier 1 Capital and Reserves. All of these ratios are described in appendix A of this subpart.

² The credit quality score is the greater of the criticized and classified items to Tier 1 capital and reserves score or the underperforming assets to Tier 1 capital and reserves score. The market risk score is the weighted average of three scores—the trading revenue volatility to Tier 1 capital score, the market risk capital to Tier 1 capital score, and the level 3 trading assets to Tier 1 capital score. All of these ratios are described in appendix A of this subpart and the method of calculating the scores is described in appendix B of this subpart. Each score is multiplied by its respective weight, and the resulting weighted score is summed to compute the score for the market risk measure. An overall weight of 35 percent is allocated between the scores for the credit quality measure and market risk measure. The allocation depends on the ratio of average trading assets to the sum of average securities, loans and trading assets (trading asset ratio) as follows: (1) Weight for credit quality score = 35 percent * (1—trading asset ratio); and, (2) Weight for market risk score = 35 percent * trading asset ratio. In calculating the trading asset ratio, exclude from the balance of loans the outstanding balance of loans provided under the Paycheck Protection Program.

(a) *Description of the loss severity measure.* The loss severity measure applies a standardized set of assumptions to an institution’s balance sheet to measure possible losses to the FDIC in the event of an institution’s failure. To determine an institution’s loss severity rate, the FDIC first applies assumptions about uninsured deposit and other liability runoff, and growth in insured deposits, to adjust the size and composition of the institution’s liabilities. Exclude total outstanding borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility from short-and long-term secured borrowings, as appropriate. Assets are then reduced to match any reduction in liabilities. Exclude from an institution’s balance of commercial and industrial loans the outstanding balance of loans provided under the Paycheck Protection Program. In the event that the outstanding balance of loans provided under the Paycheck Protection Program exceeds the balance of commercial and industrial loans, exclude any remaining balance of loans provided under the Paycheck Protection Program first from the balance of all other loans, up to the total amount of all other loans, followed by the balance of agricultural loans, up to the total amount of agricultural loans. Increase cash balances by outstanding loans provided under the Paycheck Protection Program that exceed total outstanding borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, if any. The institution’s asset values are then further reduced so that the Leverage Ratio reaches 2 percent. In both cases, assets are adjusted pro rata to preserve the institution’s asset composition. Assumptions regarding loss rates at failure for a given asset category and the extent of secured liabilities are then applied to estimated assets and liabilities at failure to determine whether the institution has enough unencumbered assets to cover domestic deposits. Any projected shortfall is divided by current domestic deposits to obtain an end-of-period loss severity ratio. The loss severity measure is an average loss severity ratio for the three most recent quarters of data available. The applicable portions of the current expected credit loss methodology (CECL) transitional amounts attributable to the allowance for credit losses on loans and leases held for investment and added to retained earnings for regulatory capital purposes pursuant to the regulatory capital regulations, as they may be amended from time to time (12 CFR part 3, 12 CFR part 217, 12 CFR part 324, 85 FR 61577 (Sept. 30, 2020), and 84 FR 4222 (Feb. 14, 2019)), will be removed from the calculation of the loss severity measure.

* * * * *
 Federal Deposit Insurance Corporation.
 By order of the Board of Directors.
 Dated at Washington, DC, on November 17, 2020.
James P. Sheesley,
Assistant Executive Secretary.
 [FR Doc. 2020–25830 Filed 12–4–20; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
14 CFR Part 39
[Docket No. FAA–2020–1110; Project Identifier MCAI–2020–01003–T]
RIN 2120–AA64
Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes
AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019–23–15, which applies to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. AD 2019–23–15 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2019–23–15, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require 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 January 21, 2021.

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 Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec, J7N 3C6, Canada; telephone 450-476-7676; email a220_crc@abc.airbus; internet <http://a220world.airbus.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-2020-1110; 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:

Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516-228-7330; 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 the **ADDRESSES** section. Include “Docket No. FAA-2020-1110; Project Identifier MCAI-2020-01003-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 Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516-228-7330; 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

The FAA issued AD 2019-23-15, Amendment 39-19809 (84 FR 67830, December 12, 2019) (AD 2019-23-15), for certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. AD 2019-23-15 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. AD 2019-23-15 resulted from a determination that new or more restrictive airworthiness limitations are necessary. The FAA issued AD 2019-

23-15 to address reduced structural integrity of the airplane or reduced controllability of the airplane.

Actions Since AD 2019-23-15 Was Issued

Since the FAA issued AD 2019-23-15, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF-2020-25, dated July 16, 2020 (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 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-2020-1110.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address reduced structural integrity of the airplane or reduced controllability of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Airbus Canada Limited Partnership has issued A220 Airworthiness Limitations BD500-3AB48-11400-02, Issue 011.00, dated June 18, 2020. This service information describes airworthiness limitations for fuel tank systems, safe life limits, and certification maintenance requirements. 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

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would retain none of the requirements of AD 2019–23–15. This proposed AD would require 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 Critical Design Configuration Control Limitations (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 (i)(1) of this proposed AD.

Costs of Compliance

The FAA estimates that this proposed AD affects 11 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. 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 agency estimates the average total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

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) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive (AD) 2019–23–15, Amendment 39–19809 (84 FR 67830, December 12, 2019), and
 - b. Adding the following new AD:

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2020–1110; Project Identifier MCAI–2020–01003–T.

(a) Comments Due Date

The FAA must receive comments by January 21, 2021.

(b) Affected ADs

This AD replaces AD 2019–23–15, Amendment 39–19809 (84 FR 67830, December 12, 2019).

(c) Applicability

This AD applies to the Airbus Canada Limited Partnership Model BD–500–1A10

and BD–500–1A11 airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) Model BD–500–1A10 airplanes, serial numbers 50001 and subsequent with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 18, 2020.

(2) Model BD–500–1A11 airplanes, serial numbers 55001 and subsequent with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 18, 2020.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane or reduced controllability of the airplane.

(f) Compliance

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

(g) New Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 011.00, dated June 18, 2020. The initial compliance time for doing the tasks is at the time specified in Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 011.00, dated June 18, 2020, or within 90 days after the effective date of this AD, whichever occurs later.

(h) New No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (g) 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 (i)(1) of this AD.

(i) 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 Airbus Canada Limited Partnership's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF-2020-25, dated July 16, 2020, 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-2020-1110.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516-228-7330; fax: 516-794-5531; email: 9-avs-nyaco-cos@faa.gov.

(3) For service information identified in this AD, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec, J7N 3C6, Canada; telephone 450-476-7676; email a220_crc@abc.airbus; internet <http://a220world.airbus.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 December 1, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020-26764 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2020-1111; Product Identifier MCAI-2020-01374-T]

RIN 2120-AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD)

2018-24-03 which applies to all Dassault Aviation Model Falcon 10 airplanes. AD 2018-24-03 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. Since the FAA issued AD 2018-24-03, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. 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 January 21, 2021.

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 EASA material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>.

For Dassault Aviation service information identified in this proposed AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201-440-6700; internet <https://www.dassaultfalcon.com>. You may view this IBR material 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. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for

and locating Docket No. FAA-2020-1111.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating FAA-2020-1111; 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: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3226; email tom.rodriguez@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 the **ADDRESSES** section. Include "Docket No. FAA-2020-1111; Product Identifier MCAI-2020-01374-T" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this NPRM based on 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 that are received, without change, to <https://www.regulations.gov>, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the FAA receives about this NPRM.

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 Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3226; email tom.rodriguez@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

The FAA issued AD 2018-24-03, Amendment 39-19507 (83 FR 61523, November 30, 2018) (“AD 2018-24-03”), for all Dassault Aviation Model Falcon 10 airplanes. AD 2018-24-03 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. The FAA issued AD 2018-24-03 to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane.

Actions Since AD 2018-24-03 Was Issued

Since the FAA issued AD 2018-24-03, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020-0215, dated October 6, 2020 (EASA AD 2020-0215) (also referred to as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Dassault Aviation Model Falcon 10 airplanes.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020-0215 describes new or more restrictive airworthiness

limitations for airplane structures and safe life limits.

This AD would also require Section 5-40-00, Airworthiness Limitations, Revision 13, dated July 2017, of the Dassault Falcon 10 Maintenance Manual, which the Director of the Federal Register approved for incorporation by reference as of January 4, 2019 (83 FR 61523, November 30, 2018).

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

FAA’s Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA has evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2018-24-03. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2020-0215 described previously, as incorporated by reference. Any differences with EASA AD 2020-0215 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.*, inspections). Compliance with these actions 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 (l)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD

process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020-0215 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020-0215 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in the EASA AD.

Service information specified in EASA AD 2020-0215 that is required for compliance with EASA AD 2020-0215 will be available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1111 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA’s process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.*, inspections) or intervals may be used unless the actions

and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under “Other FAA Provisions.” This new format includes a “New Provisions for Alternative Actions and Intervals” paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this proposed AD affects 60 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–07–01 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the agency 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. The FAA estimates the total cost per operator for the new proposed actions to be \$7,650 (90 work-hours × \$85 per work-hour).

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) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive (AD) AD 2018–24–03, Amendment 39–19507 (83 FR 61523, November 30, 2018); and
 - b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2020–1111; Product Identifier MCAI–2020–01374–T.

(a) Comments Due Date

The FAA must receive comments by January 21, 2021.

(b) Affected ADs

This AD replaces AD 2018–24–03, Amendment 39–19507 (83 FR 61523, November 30, 2018) (AD 2018–24–03).

(c) Applicability

This AD applies to all Dassault Aviation Model Falcon 10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address, among other things, fatigue cracking and damage in principal

structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2018–24–03, with no changes. Within 90 days after January 4, 2019 (the effective date of AD 2018–24–03), revise the existing maintenance or inspection program, as applicable, to incorporate Section 5–40–00, Airworthiness Limitations, Revision 13, dated July 2017, of the Dassault Falcon 10 Maintenance Manual (Section 5–40–00). The initial compliance time for accomplishing the actions is at the applicable time specified in Section 5–40–00; or within 90 days after January 4, 2019; whichever occurs later.

(h) Retained Restrictions on Alternative Actions and Intervals With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2018–24–03, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0215, dated October 6, 2020 (EASA AD 2020–0215). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2020–0215

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0215 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0215 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the “limitations, tasks and associated thresholds and intervals” specified in paragraph (3) of EASA AD 2020–0215 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0215 is at the applicable “associated thresholds” specified in paragraph (3) of EASA AD 2020–0215, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0215 do not apply to this AD.

(5) The “Remarks” section of EASA AD 2020–0215 does not apply to this AD.

(k) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2020–0215.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (m)(4) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(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, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Dassault Aviation’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) For EASA AD 2020–0215, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>.

(2) For Dassault Aviation service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet <https://www.dassaultfalcon.com>.

(3) You may view this material 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. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–1111.

(4) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International

Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email tom.rodriguez@faa.gov.

Issued on December 1, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–26770 Filed 12–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–1014; Airspace Docket No. 20–ASW–7]

RIN 2120–AA66

Proposed Amendment of Class D and E Airspace; Farmington, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D airspace at Four Corners Regional Airport. This action also proposes to modify the Class E airspace designated as a surface area to match the modified Class D dimensions. Additionally, this action proposes to modify the Class E airspace, extending upward from 700 feet above the surface. Further, this action proposes to remove the Class E airspace, extending upward from 1,200 feet above the surface. This action also proposed to remove the Four Corners Regional ILS Localizer and the Farmington VORTAC from the legal descriptions’ text headers and airspace descriptions. Lastly, this action proposes several administrative corrections to the airspace legal descriptions. This action would ensure the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before January 21, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–1014; Airspace Docket No. 20–ASW–7, at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>.

FAA Order 7400.11E, 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 7400.11E at NARA, email fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT:

Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend the Class D and Class E airspace at Four Corners Regional Airport, Farmington, NM, to support IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped

postcard on which the following statement is made: "Comments to Docket No. FAA-2020-1014; Airspace Docket No. 20-ASW-7". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations Part 71 by modifying the Class D airspace at Four Corners Regional Airport, Farmington, NM. To properly contain IFR departures, an extension should be added to the eastern boundary of the Class D airspace. The extension is designed to properly contain IFR departures flying toward or over rising terrain. This airspace area

would be described as follows: That airspace extending upward from the surface to and including 8,000 feet MSL within a 4.7-mile radius of the airport, and within 1.8 miles each side of the 086° bearing from the airport, extending from the 4.7-mile radius to 5.6 miles east of Four Corners Regional 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.

This action also proposes to modify the Class E airspace designated as a surface area to be coincident with the new Class D dimensions. This airspace area would be described as follows: Within a 4.7-mile radius of Four Corners Regional Airport and within 1 mile each side of the Four Corners Regional ILS Localizer east course extending from the 4.7-mile radius to 5.6 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Additionally, this action proposes to modify the Class E airspace extending upward from 700 feet above the surface. The current configuration does not properly contain IFR aircraft performing an instrument approach to the airport. This airspace is designed to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. This airspace area would be described as follows: That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the airport, and within 4 miles north and 8 miles south of the 088° bearing from the airport, extending from the 6.7-mile radius of the airport, and extending from 4 miles east of the airport to 22.4 miles east of the airport, and within 4.2 miles each side of the 267° bearing from the airport, extending from the 6.7-mile radius to 12.5 miles west of Four Corners Regional Airport.

This action also proposes to remove the Class E airspace extending upward from 1,200 feet above the surface. This area is wholly contained with the Denver en route airspace and duplication is not necessary.

The action also proposes to remove the Four Corners Regional ILS Localizer from the Class D and Class E2 text headers and airspace descriptions. The action also proposes to remove the Farmington VORTAC from the Class E5 airspace text header and airspace description. The navigational aids are

not needed to define the airspace. Removal of the navigational aids allows the airspace to be defined from a single reference point which simplifies how the airspace is described.

Lastly, this action proposes several administrative corrections to the airspaces' legal descriptions. This action proposes to remove the city name from the second line of Class D, Class E2, and Class E5 the text header. The legal descriptions for the Class D and Class E2 airspace contain the outdated term "Airport/Facility Directory" this action proposes to update the term to "Chart Supplement". The airport's geographic coordinates in the Class D and Class E2 text headers do not match the FAA database; this action proposes to update the geographic coordinates to "lat. 36°44'29" N, long. 108°13'48" W."

Class D, E2, and E5 airspace designations are published in paragraphs 5000, 6002, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, 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 the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and

Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW NM D Farmington, NM [Amended]

Four Corners Regional Airport, NM
(Lat. 36°44′29″ N, long. 108°13′48″ W)

That airspace extending upward from the surface to and including 8,000 feet MSL within a 4.7-mile radius of the airport, and within 1.8 miles each side of the 086° bearing from the airport, extending from the 4.7-mile radius to 5.6 miles east of Four Corners Regional 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 Airspace Designated as a Surface Area.

* * * * *

ASW NM E2 Farmington, NM [Amended]

Four Corners Regional Airport, NM
(Lat. 36°44′29″ N, long. 108°13′48″ W)

That airspace extending upward from the surface within a 4.7-mile radius of the airport, and within 1.8 miles each side of the 086° bearing from the airport, extending from the 4.7-mile radius to 5.6 miles east of Four Corners Regional 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.

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

* * * * *

ASW NM E5 Farmington, NM [Amended]

Four Corners Regional Airport, NM
(Lat. 36°44′29″ N, long. 108°13′48″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the airport, and within 4 miles north and 8 miles south of the 088° bearing from the airport, extending from the 6.7-mile radius of the airport, and extending from 4 miles east of the airport to 22.4 miles east of the airport, and within 4.2 miles each side of the 267° bearing from the airport, extending from the 6.7-mile radius to 12.5 miles west of Four Corners Regional Airport.

Issued in Seattle, Washington, on December 1, 2020.

B.G. Chew,

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

[FR Doc. 2020–26818 Filed 12–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 181

RIN 1400–AE98

[Public Notice: 10990]

Publication, Coordination, and Reporting of International Agreements: Amendments

AGENCY: Department of State.

ACTION: Proposed rule with request for comment.

SUMMARY: The Treaties and Other International Acts Series (TIAS) is the official treaty series of the United States and serves as evidence of the treaties, and international agreements other than treaties, in all courts of law and equity of the United States, and in public offices of the federal government and of the states, without any need of further authentication. Certain international agreements may be exempted from publication in TIAS, if the Department of State provides notice in its regulations. With this proposed rule, the Department of State is proposing to update those regulations to clarify the scope of an existing exemption.

DATES: The Department of State will consider comments submitted before February 5, 2021.

ADDRESSES: You may submit comments by any of the following methods:

- **Email:** KottmyerAM@state.gov. You must include the RIN 1400–AE98 in the subject line of your message.

- **Website:** Persons with access to the internet may also view this notice and provide comments by going to the [regulations.gov](http://www.regulations.gov) website and searching Docket DOS–2019–0045 at: <http://www.regulations.gov/>.

FOR FURTHER INFORMATION CONTACT: Michael Mattler, Treaty Affairs, Office of the Legal Adviser, Department of State, Washington, DC 20520, (202) 647–1345, or at treatyoffice@state.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 1 U.S.C. 112a, the Secretary of State is required to cause to be published annually a compilation of all treaties and international agreements to which the United States is a party that were signed, proclaimed, or “with reference to which any other final formality ha[d] been executed” during the calendar year.

The Secretary of State, however, may determine that publication of particular categories of agreements is not required if certain criteria are met (See 1 U.S.C. 112a(b)). The criteria are:

(1) Such agreements are not treaties that have been brought into force for the United States after having received Senate advice and consent pursuant to section 2(2) of Article II of the Constitution of the United States;

(2) The public interest in such agreements is insufficient to justify their publication, because (A) as of the date of enactment of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, the agreements are no longer in force; (B) the agreements do not create private rights or duties, or establish standards intended to govern government action in the treatment of private individuals; (C) in view of the limited or specialized nature of the public interest in such agreements, such interest can adequately be satisfied by an alternative means; or (D) the public disclosure of the text of the agreement would, in the opinion of the President, be prejudicial to the national security of the United States; and

(3) Copies of such agreements (other than those in paragraph (2)(D)), including certified copies where necessary for litigation or similar purposes, will be made available by the Department of State upon request.

Pursuant to 1 U.S.C. 112a(c), any such determination must be published in the **Federal Register**. The Department proposes amending the exemption contained in 22 CFR 181.8(a)(9) to clarify its scope. 22 CFR 181.8(a)(9) exempts from publication “Agreements that have been given a national security classification pursuant to Executive Order No. 13526, its predecessors or successors.” The Department proposes amending this subsection to read “Agreements that have been given a national security classification pursuant to Executive Order No. 13526, its predecessors or successors, or are otherwise exempt from public disclosure pursuant to U.S. law.”

In proposing this change, the Department wishes to clarify that the scope of the exemption contained in 22 CFR 181.8(a)(9) includes agreements that have not been given a national security classification pursuant to Executive Order No. 13526, its predecessors or successors, but nonetheless are exempt from public disclosure pursuant to U.S. law. The principal category of agreements for which this clarification is relevant are agreements that are exempt from public disclosure pursuant to 10 U.S.C. 130c, which authorizes specified national security officials to withhold from public disclosure otherwise required by law sensitive information of foreign governments and international organizations.

Regulatory Analysis

Administrative Procedure Act

The Department is issuing this proposed rule for comment in accordance with the Administrative Procedure Act (5 U.S.C. 553).

Regulatory Flexibility Act/Executive Order 13272: Small Business

This rulemaking is hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

The Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking does not constitute a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking.

The Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure nor would it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132: Federalism and Executive Order 13175, Impact on Tribes

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor will the regulations have federalism implications warranting the application

of Executive Orders 12372 and 13132. This rule will not have tribal implications, will not impose costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Executive Orders 12866 and 13563: Regulatory Review

This rule has been drafted in accordance with the principles of Executive Orders 12866 and 13563. This rule has been determined to be a significant rulemaking under section 3 of Executive Order 12866, but not economically significant. With respect to the costs and benefits of this rule, the Department notes that agreements addressed by the proposed clarification are, by definition, already exempt from public disclosure pursuant to U.S. law. The proposed rule is intended to provide greater clarity to the application of the existing rule rather than to effect a change in existing practices regarding the publication of agreements. For this reason, the Department does not anticipate any costs to the public from this rulemaking. Therefore, the Department believes that the benefits of this rulemaking outweigh any costs.

Executive Order 12988: Civil Justice Reform

This rule has been reviewed in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13771

This proposed rule is not expected to be subject to the requirements of Executive Order 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulation. This rule contains no new collection of information requirements.

List of Subjects in 22 CFR Part 181

Treaties.

For the reasons set forth above, 22 CFR part 181 is proposed to be amended as follows:

PART 181—COORDINATION, REPORTING AND PUBLICATION OF INTERNATIONAL AGREEMENTS

■ 1. The Authority section for Part 181 continues to read as follows:

Authority: 1 U.S.C. 112a, 112b; and 22 U.S.C. 2651a.

§ 181.8 [Amended]

■ 2. In § 181.8 revise paragraph (a)(9) to read as follows:

(a) * * *

* * * * *

(9) Agreements that have been given a national security classification pursuant to Executive Order No. 13526, its predecessors or successors, or are otherwise exempt from public disclosure pursuant to U.S. law.

* * * * *

Zachary A. Parker,

*Director, Office of Directives Management,
Department of State.*

[FR Doc. 2020-26718 Filed 12-4-20; 8:45 am]

BILLING CODE 4710-08-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 18-143, 10-90, 14-58; FCC 19-95; FRS 17234]

The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications; Correction

AGENCY: Federal Communications Commission.

ACTION: Notification of intent to correct.

SUMMARY: This document announces that the Commission will correct an error in the regulatory text of a **Federal Register** document that took major steps to promote the deployment of advanced, hardened networks in the Territories by allocating nearly a billion dollars in Federal universal service support in Puerto Rico and the U.S. Virgin Islands once an effective date is established for the relevant section. The summary was published in the **Federal Register** on November 7, 2019.

DATES: When the Commission publishes a document in the **Federal Register** announcing the effective date of the sections published 84 FR 59937 (November 7, 2019), it will also correct this error.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This summary contains a correction to the regulatory text of a **Federal Register** document, 84 FR 59937, November 7, 2019. The full text of the Commission's Report and Order and Order on Reconsideration in WC Docket Nos. 18-143, 10-90, 14-58; FCC 19-95, released

on September 30, 2019 is available for public inspection during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554.

Correction

■ In final rule FR Doc. 2019–22842, published November 7, 2019 (84 FR 59937), on page 59964, in the first column, in amendatory instruction 3, paragraph (b)(7) is corrected to read as follows:

§ 54.316 [Corrected]

(b) * * *

(7) Recipients of Uniendo a Puerto Rico Fund Stage 2 fixed and Connect USVI Fund fixed Stage 2 fixed support shall provide: On an annual basis by the last business day of the second calendar month following each service milestone in § 54.1506, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specified in § 54.1507 to the required percentage of its supported locations in Puerto Rico and the U.S. Virgin Islands as set forth in § 54.1506. The annual certification shall quantify the carrier's progress toward or, as applicable, completion of deployment in accordance with the resilience and redundancy commitments in its application and in accordance with the detailed network plan it submitted to the Wireline Competition Bureau.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–25145 Filed 12–4–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 19–348; Report No. 3163; FRS 17254]

Petition for Reconsideration of Action in Proceedings

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: Petition for Reconsideration (Petition) has been filed in the Commission's proceeding by David R. Siddall, on behalf of ARRL, The National Association for Amateur Radio.

DATES: Oppositions to the Petition must be filed on or before December 22, 2020. Replies to an opposition must be filed on or before January 4, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jon Markman, Wireless Telecommunications Bureau, (202) 418–7090.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3163, released November 16, 2020. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at: <http://apps.fcc.gov/ecfs/>. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Facilitating Shared Use in the 3.1–3.55 GHz Band, FCC 20–138, published 85 FR 64062, October 9, 2020, in WT Docket No 19–348. This document is being published pursuant to 47 CFR 1.429(e). See also 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–26805 Filed 12–4–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 7, 13, 15, 17, and 52

[FAR Case 2015–038, Docket No. 2015–0038, Sequence No. 1]

RIN 9000–AN31

Federal Acquisition Regulation: Reverse Auction Guidance

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to provide guidance on the use of reverse auctions.

DATES: Interested parties should submit comments to the Regulatory Secretariat at one of the addresses shown below on or before February 5, 2021 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments in response to FAR case 2015–038 to <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “FAR Case 2015–038”. Select the link “Comment Now” that corresponds with “FAR Case 2015–038.” Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2015–038” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite “FAR case 2015–038” in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite “FAR Case 2015–038.”

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR in response to Government Accountability Office (GAO) report, GAO–14–108, Reverse Auctions: *Guidance is Needed to Maximize Competition and Achieve Cost Savings*, dated December 2013, and GAO report 18–446, Reverse Auctions: *Additional Guidance Could Help Increase Benefits and Reduce Fees*, dated July 2018. Reverse auctions are a tool utilized by Federal agencies to obtain competitive pricing for an acquisition. Some of the potential benefits of reverse auctions include increased competition, price reductions, and greater small business participation. During a reverse auction, multiple vendors compete with one another to win a contract from the Government by lowering the offered price for which the vendor is willing to sell a particular product or service. The offered price(s), but not the offerors' identity, may be revealed to all offerors during the auction, and offerors have the opportunity to submit lower priced offers during the auction.

The use of reverse auctions to obtain competitive pricing is not a new concept to the Government or industry. The reverse auction model was introduced in the mid-1990s. Many private companies now offer software and/or services to facilitate reverse auctions, as well as use reverse auctions in their own supply chain management scheme. In 1997, the FAR was also amended to permit the use of reverse auctions in Federal acquisitions. Since then, Federal agencies have been able to use reverse auctions to obtain pricing, while operating within the constructs of the FAR and any supplemental agency guidance. As a result, this rule intends to implement Governmentwide policy and guidance on reverse auctions to ensure a standardized and consistent use amongst all Federal agencies.

Between its 2013 and 2018 reports, GAO reviewed Federal agencies' use of reverse auctions over almost a decade (between 2008 and 2017). Six agencies were identified as the largest users of reverse auctions, conducting approximately 15,000 reverse auctions in 2016. Through its review of the contract awards that resulted from these agencies' use of reverse auctions, GAO found that: Reverse auctions are generally used when acquiring commercial products; reverse auctions predominately result in the award of a fixed price contract valued less than \$150,000 to a small business; the total annual value of contracts that utilize reverse auctions regularly represents less than one percent of all annual Government contract spending; and most used the services of a commercial reverse auction service provider.

GAO reviewed and analyzed various aspects of agencies' use of reverse auctions. GAO found that: Confusion exists concerning a lack of documentation about reverse auction service provider fees and their application to Federal contracts; there is a lack of sufficient data available for agencies to verify actual cost savings resulting from a reverse auction; the potential benefits of reverse auctions are not being maximized, as many reverse auctions are resulting in the receipt of only one offer or a lack of interactive competition amongst offerors (*i.e.*, the submission of more than one offer by a vendor); and when reverse auctions are used in the acquisition of items from preexisting contracts, agencies need to consider the impact of potentially paying two fees, one to use the contract and one to use the services of the reverse auction service provider, when determining whether the use of a reverse auction is cost effective, in comparison to other methods that are

available to obtain pricing for an acquisition.

As a result of its findings in 2013, GAO recommended that the Director of the Office of Management and Budget amend the FAR to address agencies' use of reverse auctions and issue Governmentwide guidance to maximize competition and savings when using reverse auctions. In response, the Office of Federal Procurement Policy issued a memorandum on June 1, 2015, entitled *Effective Use of Reverse Auctions*. This proposed rule implements the policy of the OFPP memo and addresses some of the concerns in the GAO reports.

II. Discussion and Analysis

A. New Subpart 17.8 and Associated Provision and Clauses

Amendments to the FAR are proposed by this rule. To address GAO recommendations, a new FAR subpart 17.8, Reverse Auctions, is added. This new subpart:

- Provides Governmentwide policy on: When the use of reverse auctions may be appropriate, conducting reverse auctions, and utilizing reverse auction service providers, including the evaluation of fees;
- Identifies when reverse auctions shall not be used;
- Requires contracting officers to evaluate and document that the use of a reverse auction service provider is cost effective;
- Requires agency acquisitions for reverse auction services to be competed amongst commercial reverse auction service providers, and for the resulting contract or agreement to be sufficiently documented and made available to agency contracting officers for future reference and verification needs;
- Clarifies requirements for contracting officers when conducting a reverse auction or utilizing the services of a reverse auction service provider;
- Requires the contracting officer's contact information to be available to offerors; and
- Provides guidance for situations in which only one offer is received in response to a reverse auction.

The subpart also prescribes the use of a new provision, FAR provision 52.217-XX, Reverse Auction, and two new clauses, FAR clause 52.217-YY, Reverse Auction—Orders or Calls, and 52.217-ZZ, Reverse Auction Services.

FAR provision 52.217-XX is included in solicitations when the contracting officer will utilize a reverse auction to obtain competitive pricing for an award. It notifies offerors that by submission of a quote or proposal, offerors agree to participate in the reverse auction and

agree that the Government may reveal to all offerors the offered price(s), but without revealing any offeror's identity, except for the awardee's identity subsequent to an award resulting from the auction. The provision also reserves the Government's right to cancel the auction, in the event only one offer is received, identifies that the Government may use the services of a reverse auction service provider to conduct the auction, and notifies offerors how to withdraw agreement from further participation in the auction.

FAR clause 52.217-YY is included in solicitations for and within indefinite-delivery, indefinite-quantity contracts and blanket purchase agreements (BPA) when a reverse auction may be used to award an order under the contract or agreement. The clause provides BPA holders and contractors with a notification similar to that of FAR provision 52.217-XX, but applies to delivery orders, task orders, or calls to be made under the basic contract or BPA.

FAR clause 52.217-ZZ is included in solicitations and contracts for reverse auction services and specifies requirements for reverse auction service providers that provide reverse auction services to the Government.

B. Other Amendments to the FAR

To implement reverse auction guidance, this rule proposes additional FAR amendments as follows:

A definition for "reverse auction" is provided in FAR 2.101.

In FAR 3.104-4, language is added to show that during reverse auctions, agencies may reveal to all offerors the offered price(s), but may not reveal any offeror's identity except for the awardee's identity subsequent to an award resulting from the auction.

FAR 7.105(b)(4) is revised to address "reverse auctions" under acquisition plan requirements.

FAR 13.104 is revised to refer contracting officers to the requirements of proposed subpart 17.8 when promoting competition and utilizing simplified acquisition procedures.

The limitations at FAR 15.306(e)(3) are revised to permit the Government to reveal to all offerors the offered price(s), without revealing any offeror's identity, when having exchanges with offerors under negotiated acquisition procedures and utilizing a reverse auction to obtain pricing.

FAR 17.000(d) is added to include reverse auctions in the list of special contracting methods in part 17.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-The-Shelf Items

The reverse auction provision and clauses are available for use at or below the simplified acquisition threshold, and for commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to revise the Federal Acquisition Regulation (FAR) in response to a Government Accountability Office (GAO) report, GAO-14-108, *Reverse Auctions: Guidance is Needed to Maximize Competition and Achieve Cost Savings*, dated December 2013, and GAO report 18-446, *Reverse Auctions: Additional Guidance Could Help Increase Benefits and Reduce Fees*, dated July 2018. Reverse auctions are a tool utilized by Federal agencies to increase competition and reduce the cost of certain items. During a reverse auction, offerors provide sequentially lower prices in an effort to win the contract award. The GAO report noted that the FAR does not specifically address reverse auctions and recommended that the Office of Management and Budget (OMB) take steps to amend the FAR to address agencies' use of reverse auctions.

This proposed rule implements the June 1, 2015, Office of Federal Procurement Policy

memorandum, *Effective Use of Reverse Auctions*, and addresses some of the concerns in the GAO reports. The objective of the rule is to ensure the effective use of reverse auctions to procure supplies and services within the Federal Government.

The Government does not currently collect data on the number of awards that utilized a reverse auction to obtain pricing. However, GAO report 18-446 indicates that, while the total value of contracts awarded annually that utilize reverse auctions represents less than one percent of all annual Government contract spending, a majority of the annual contracts awarded that utilize reverse auctions are awarded to small business entities.

The proposed rule does not impose any Paperwork Reduction Act reporting or recordkeeping requirements on any small entities. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternative approaches were considered. It is not anticipated that the proposed rule will have a significant economic impact on small entities.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015-038) in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 3, 7, 13, 15, 17, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 2, 3, 7, 13, 15, 17, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, 7, 13, 15, 17, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101(b)(2) by adding in alphabetical order a definition for “Reverse auction” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, where offerors see competing offerors' price(s), without disclosure of the competing offerors' identity, and have the opportunity to submit lower priced offers until the close of the auction.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 3. Amend section 3.103-2 by adding paragraph (a)(1)(iv) to read as follows:

3.103-2 Evaluating the certification.

(a) * * *

(1) * * *

(iv) Participating in a reverse auction (see subpart 17.8).

* * * * *

■ 4. Amend section 3.104-4 by revising paragraph (e)(1) to read as follows:

3.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

* * * * *

(e) * * *

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information. During reverse auctions, agencies may reveal to all offerors the offered price(s), but may not reveal any offeror's identity except for the awardee's identity subsequent to an award resulting from the auction (see subpart 17.8);

* * * * *

PART 7—ACQUISITION PLANNING

7.105 [Amended]

■ 5. Amend section 7.105 by removing from paragraph (b)(4) introductory text “including” and adding “including the basis for using a reverse auction (when applicable),” in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 6. Amend section 13.104 by adding paragraph (c) to read as follows:

13.104 Promoting competition.

* * * * *

(c) When conducting a reverse auction, see subpart 17.8.

PART 15—CONTRACTING BY NEGOTIATION

■ 7. Amend section 15.306 by revising paragraph (e)(3) to read as follows:

15.306 Exchanges with offerors after receipt of proposals.

* * * * *

(e) * * *

(3) Reveals an offeror's price without that offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable (41 U.S.C. 2102 and 2107). When using reverse auction procedures (see subpart 17.8), it is also permissible to reveal to all offerors the offered price(s), without revealing any offeror's identity;

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

■ 8. Revise section 17.000 by—

- a. Removing from paragraph (b) the word “and”;
- b. Removing from paragraph (c) “contracting,” and adding “contracting; and” in its place; and
- c. Adding paragraph (d).

The addition reads as follows:

17.000 Scope of part.

* * * * *

(d) The use of reverse auctions to obtain competitive pricing.

■ 9. Add subpart 17.8 to read as follows:

Subpart 17.8—Reverse Auctions

Sec.

- 17.800 Scope of subpart.
- 17.801 Definition.
- 17.802 Policy.
- 17.803 Applicability.
- 17.804 Procedures.
- 17.805 Solicitation provision and contract clauses.

Subpart 17.8—Reverse Auctions

17.800 Scope of subpart.

This subpart prescribes policies and procedures for conducting reverse auctions and utilizing reverse auction service providers.

17.801 Definition.

As used in this subpart, *reverse auction service provider* means a

commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

17.802 Policy.

(a) The use of reverse auctions may be appropriate when market research indicates that—

(1) A competitive marketplace exists for the supplies and/or services being acquired;

(2) Multiple offerors can satisfy the agency's requirement; and

(3) The nature of the supplies and/or services being acquired (*e.g.*, clearly defined specifications, less complex requirements) encourages an iterative bidding process (*i.e.*, multiple offerors participate and at least one offeror submits more than one offer during the reverse auction).

(b) The reverse auction process is used to obtain pricing for an acquisition. When using the reverse auction process, contracting officers are still required to follow the acquisition policies and procedures (*i.e.*, subpart 8.4 or 16.5 or part 13 or 15) prescribed elsewhere in the FAR, as appropriate for the particular acquisition.

(c)(1) A service platform for conducting reverse auctions may be provided by a commercial or Government entity.

(2) While some reverse auction service providers are paid directly by the Government for reverse auction services, other providers may incorporate a fee structure that uses an indirect payment method. When using an indirect payment method, the reverse auction service provider adds a fee(s) to the price of the winning offer that is provided to the Government at the close of an auction. The Government then pays the winning offeror the total price of the offer, which includes the fee(s) added by the reverse auction service provider. The reverse auction service provider then collects its fee(s) from the winning offeror.

(3) When acquiring reverse auction services to be provided by a commercial reverse auction service provider, agencies shall—

(i) Compete the requirement;

(ii) Sufficiently detail the provider's fee structure in the resultant contract or agreement for reverse auction services; and

(iii) Make the details of the contract or agreement for reverse auction services, including the provider's fee structure, available to contracting officers for consideration when determining whether to use a reverse auction service provider, in accordance with 17.804(a).

(d) Contracting officers shall only use the services of a reverse auction service provider that—

(1) Does not assert or imply that it can or will obtain a Government contract for participants of a reverse auction;

(2) Allows entities to register, at no cost, as potential offerors for reverse auctions conducted on behalf of the Government on the provider's reverse auction platform;

(3) Allows each entity, as part of the registration process, the opportunity to execute a proprietary data protection agreement with the provider; provided that the terms in the agreement do not affect the terms and conditions of a Government solicitation or contract;

(4) Protects from unauthorized use or disclosure and does not release outside of the Government—

(i) All contractor bid or proposal information (see 3.104–1) and source selection information associated with providing reverse auction services to the Government;

(ii) All information similarly generated to support the issuance of a task or delivery order or call against a blanket purchase agreement; and

(iii) Information identified by an offeror as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the reverse auction participant's price or proposal;

(5) At the close of each auction—

(i) Provides the Government with the winning offer, along with information that separately identifies the offeror's price and the price for each provider fee or charge included in the total price;

(ii) Provides the Government with all information and documentation received from offerors in response to the reverse auction; and

(iii) Removes all documentation received from offerors in response to the reverse auction from its business and computer systems;

(6) Does not participate as an offeror in any reverse auction which the provider is hosting on behalf of the Government. This prohibition includes participation in a reverse auction by any entity with which the provider has a relationship that raises an actual or potential conflict of interest; and

(7) Asserts no rights or license in the data gathered or generated during a reverse auction.

(e) Only a contracting officer shall—

(1) Exclude an offeror from participating in an auction;

(2) Determine the awardee(s) of any reverse auction; or

(3) Determine that the offeror is a responsible prospective contractor (see 9.103, 9.104–1, and 9.405(d)).

17.803 Applicability.

Reverse auction processes shall not be used for—

- (a) Design-build construction contracts (see part 36);
- (b) Sealed bids (see part 14); or
- (c) Acquisition of personal protective equipment.

17.804 Procedures.

(a) When considering the use of a reverse auction service provider, the contracting officer shall—

- (1) Conduct market research for available sources of reverse auction services (e.g., existing agency contracts or agreements (see 17.802(c)), commercial service providers (see 17.802(d)), or Government service providers);

(2) Evaluate the fee structure for each reverse auction service provider; and

(3) Document the contract file with a determination that the use of a reverse auction service provider is cost effective.

(b) When conducting a reverse auction, the contracting officer shall—

(1) Only provide the offered price(s) to all offerors, without disclosing the identity of the offeror(s) (see 3.104–4(a) and (e)(1));

(2) Allow offerors the opportunity to continually revise their prices downward during the reverse auction until the close of the auction; and

(3) Allow an offeror to withdraw an offer from further consideration prior to the close of an auction.

(c) When using the services of a reverse auction service provider, contracting officers shall—

(1) Include contact information in the solicitation that will allow offerors to contact the contracting officer directly with any questions;

(2) Upon receipt of a winning offer, verify that any provider fees or charges included in the price are in accordance with the provider's fee structure, as evaluated in accordance with paragraph (a)(2) of this section; and

(3) Include in the contact file any information and/or documentation received by the reverse auction service provider from offerors responding to the reverse auction.

(d) If only one offeror participates in an auction, the contracting officer may—

(1) Cancel the auction and document the contract file with evidence of the participation of only one offeror; or

(2) Accept the offer, only if the price is determined to be fair and reasonable (see 13.106–3(a)(2) and 15.404–1).

17.805 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at 52.217–XX, Reverse Auction, in solicitations, when the contracting officer is utilizing a reverse auction to award a contract or blanket purchase agreement.

(b) The contracting officer shall insert the clause at 52.217–YY, Reverse Auction-Orders or Calls, in solicitations and contracts for a multiple award indefinite-delivery/indefinite-quantity contract or blanket purchase agreement, and a reverse auction may be used to place orders or calls under the basic contract or blanket purchase agreement.

(c) The contracting officer shall insert the clause at 52.217–ZZ, Reverse Auction Services, in all solicitations and contracts for the purchase of reverse auction services.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Add sections 52.217–XX, 52.217–YY, and 52.217–ZZ to read as follows:

*	*	*	*	*
52.217–XX	Reverse auction.			
52.217–YY	Reverse auction-orders or calls.			
52.217–ZZ	Reverse auction services.			
*	*	*	*	*

52.217–XX Reverse auction.

As prescribed in 17.805(a), insert the following provision:

Reverse Auction (Date)

(a) *Definitions.* As used in this provision—
Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, where offerors see competing offerors' price(s), without disclosure of the competing offerors' identity, and have the opportunity to submit lower priced offers until the close of the auction.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

(b) *Reverse auction.* The Government intends to conduct a reverse auction under this solicitation to award a contract or blanket purchase agreement.

(c) *Offeror agreement.* By submission of a quote or proposal in response to the solicitation, the Offeror agrees to participate in the reverse auction, and agrees that the Government may reveal to all Offerors the offered price(s) in the auction, without revealing any Offeror's identity, except for the awardee's identity subsequent to an award resulting from the auction. The Offeror may withdraw its agreement to further participate in the process by withdrawing its offer before the close of the auction by notifying the Contracting Officer via the contact method identified in the solicitation.

(d) *Only one offer.* If the reverse auction produces only one offer, the Government reserves the right to cancel the auction.

(e) *Release of information.* The Government may use a reverse auction service provider to conduct the reverse auction. Any price or proposal information or source selection information received by the reverse auction service provider in relation to the reverse auction shall not be released, outside of the Government, unless otherwise required by law. However, this does not prevent the Government from revealing to all Offerors the offered price(s) in the auction, without revealing any Offeror's identity. Price or proposal information includes, but is not limited to—

(1) Contractor bid or proposal information, as defined at Federal Acquisition Regulation 3.104–1; and

(2) Information identified by the Offeror as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the Offeror's price or proposal.

(End of Provision)

52.217–YY Reverse auction-orders or calls.

As prescribed in 17.805(b), insert the following clause:

Reverse Auction—Orders or Calls (Date)

(a) *Definitions.* As used in this clause—
Reverse auction means the process for obtaining pricing, usually supported by an electronic tool, where offerors see competing offerors' price(s), without disclosure of the competing offerors' identity, and have the opportunity to submit lower priced offers until the close of the auction.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

(b) *Reverse auction.* The Contracting Officer may conduct a reverse auction to award an order or call under this contract or blanket purchase agreement.

(c) *Offeror agreement.* When a reverse auction is conducted under this contract or blanket purchase agreement, the following applies:

(1) The Contractor's or blanket purchase agreement holder's submission of a quote or proposal in response to the solicitation for an order or call constitutes agreement to participate in the auction.

(2) The Government may reveal to all Offerors the offered price(s) in the auction, without revealing any Offerors' identity, except for the awardee's identity subsequent to an award resulting from the auction.

(3) The Contractor or blanket purchase agreement holder may withdraw its agreement to further participation in the reverse auction by withdrawing its offer. To withdraw an offer made in response to a reverse auction solicitation issued under this contract or blanket purchase agreement, the Contractor or blanket purchase agreement holder shall notify the Contracting Officer of the request before the close of the auction via the contact method identified in the solicitation.

(4) If the reverse auction produces only one offer, the Government reserves the right to cancel the auction.

(d) *Release of information.* The Government may use a reverse auction service provider to conduct the reverse auction. Any price or proposal information or source selection information received by the reverse auction service provider in relation to the reverse auction shall not be released, outside of the Government. However, this does not prevent the Government from revealing to all Offerors the offered price(s) in the auction, without revealing any Offeror's identity. Price or proposal information includes, but is not limited to—

(1) Contractor bid or proposal information, as defined at Federal Acquisition Regulation 3.104–1;

(2) Price or proposal information similarly generated for a task or delivery order or a call against a blanket purchase agreement; and

(3) Information identified by the Offeror as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the Offeror's price or proposal.

(End of Clause)

52.217–ZZ Reverse auction services.

As prescribed in 17.805(c), insert the following clause:

Reverse Auction Services (Date)

(a) *Definition.* *Reverse auction* means the process for obtaining pricing, usually supported by an electronic tool, where offerors see competing offerors' price(s), without disclosure of the competing offeror's identity, and have the opportunity to submit

lower priced offers until the close of the auction.

(b) *Duties of the reverse auction service provider.* When providing reverse auction services to the Government, the Contractor shall—

(1) Not assert or imply that it can or will obtain a Government contract for the participants of a reverse auction;

(2) Allow entities to register, at no cost, as potential offerors for any reverse auction conducted on behalf of the Government on the provider's reverse auction platform. As part of the registration process, the Contractor shall allow each entity the opportunity to execute a proprietary data protection agreement with the Contractor; however, the Contractor shall not negotiate terms in the agreement that affect the terms and conditions of a Government solicitation or contract;

(3) Protect from unauthorized use or disclosure and not release outside of the Government any price or proposal information or any source selection information (see the "source selection information" definition in Federal Acquisition Regulation (FAR) 2.101) received by the Contractor in relation to a reverse auction. However, this does not prevent the Contractor from revealing to all reverse auction participants the offered price(s) in the auction, without revealing any reverse auction participants' identity. Price or proposal information shall include, but is not limited to—

(i) Contractor bid or proposal information, as defined at FAR 3.104–1;

(ii) Price or proposal information similarly generated for a task or delivery order or a call against a blanket purchase agreement; and

(iii) Information identified by the reverse auction participant as restricted from duplication, use, or disclosure—in whole or in part—for any purpose other than to evaluate the reverse auction participant's price or proposal;

(4) Not participate as an offeror in any reverse auction which the Contractor is hosting on behalf of the Government. This prohibition includes participation in a reverse auction by any entity with which the Contractor has a relationship that raises an actual or potential conflict of interest;

(5) At the close of each auction—

(i) Provide the Contracting Officer with the winning offer, along with information that separately identifies the offeror's price and the price for each provider fee or charge included in the total price;

(ii) Provide the Contracting Officer with all information and documentation received from reverse auction participants in response to the reverse auction; and

(iii) Remove all documentation received from reverse auction participants in response to the reverse auction from its business and computer systems; and

(6) Assert no right or license in the data gathered or generated during a reverse auction.

(End of Clause)

[FR Doc. 2020–24936 Filed 12–4–20; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register

Vol. 85, No. 235

Monday, December 7, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 2, 2020.

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 January 6, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Advanced Biofuel Payment Program.

OMB Control Number: 0570-0063.

Summary of Collection: Section 9005 of Title IX of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) authorizes Rural Business-Cooperative Service (RBS) to enter into contracts to make payments to eligible entities to support and ensure an expanding production of advanced biofuels. To receive payments under the Program, eligible entities are producers of advanced biofuels that meet all of the requirements of the Program. Eligible entities can be an individual or legal entity, including a corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit that produces an advanced biofuel and that sells the advanced biofuel on the commercial market.

Need and Use of the Information: Advanced biofuel producers seeking to participate in the Program must enroll in the Program by submitting an application (Form RD 4288-1), which includes specific information about the producer and the producer's advanced biofuel biorefineries. This information will be used to determine whether the advanced biofuel producer is eligible to participate in the Program and whether the advanced biofuel being produced is eligible for payments under the Program. Form RD 4288-1 will also be used by the Agency to sign-up advance biofuel producers in subsequent fiscal years (FY) and to obtain information to help determine payment rates.

Once an advanced biofuel producer has been approved for participation in the Program, the producer and the Agency will enter into a contract (Form RD 4288-2). Once the contract is signed, the advanced biofuel producer will submit payment requests (Form RD-4288-3), preferably on a quarterly basis. The information in the payment request forms will be used by the Agency to determine payments to the advanced biofuel producers.

Description of Respondents: Business or other for-profit; Individuals.

Number of Respondents: 206.

Frequency of Responses: Reporting: Quarterly, Annually.

Total Burden Hours: 1,339.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020-26803 Filed 12-4-20; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket No. RBS-20-BUSINESS-0035]

Notice of Solicitation of Applications for Inviting Applications for the Intermediary Relending Program for Fiscal Year 2021

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice is to invite applications under the Intermediary Relending Program (IRP) for fiscal year (FY) 2021, subject to availability of funding. This Notice is being issued in order to allow applicants enough time to leverage financing, prepare and submit their applications, and give the Agency time to process applications within FY 2021. The Agency anticipates a forthcoming IRP rulemaking that will incorporate the program statutory requirements established in the Agricultural Improvement Act of 2018 (2018 Farm Bill) and will improve and streamline process and efficiency in program administration.

Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. An announcement on the website at <https://www.rd.usda.gov/newsroom/fy2021-appropriated-funding> will identify the amount received in the appropriations.

All applicants are responsible for any expenses incurred in developing their applications.

DATES: The deadlines for completed applications to be received in the USDA Rural Development State Office for quarterly funding competitions is no later than 4:30 p.m. (local time) on: First Quarter—September 30, 2020, Second Quarter—December 31, 2020, Third Quarter—March 31, 2021 and Fourth Quarter—June 30, 2021.

ADDRESSES: Applications must be submitted to the USDA Rural

Development State Office for the state where the project is located. Applications may be submitted in paper or electronic format to the appropriate Rural Development State Office and must be received by 4:30 p.m. local time on the deadline date(s). Applicants are encouraged to contact their respective Rural Development State Office for an email contact to submit an electronic application prior to the submission deadline date(s). A list of the USDA Rural Development State Office contacts can be found at: <https://www.rd.usda.gov/page/state-offices>.

FOR FURTHER INFORMATION CONTACT: Lori Hood at (202) 720-9815, lori.hood@usda.gov or David Chestnut at (202) 692-5233, david.chestnut@usda.gov, Program Management Division, Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, MS 3226, Room 4202-S, Washington, DC 20250-3226, or call (202) 720-1400. For further information on this notice, please contact the USDA Rural Development State Office in the State in which the applicant's headquarters is located. A list of Rural Development State Office contacts is provided at the following link: <https://www.rd.usda.gov/page/state-offices>.

SUPPLEMENTARY INFORMATION:

Overview

Solicitation Opportunity Type: Intermediary Relending Program.
Announcement Type: Solicitation of Applications for FY 2021 funds.
Catalog of Federal Domestic Assistance Number: 10.767.
Dates: Applications are received on a continuous basis and compete for available funds on a quarterly basis. To compete for regular IRP funds, applications must be received in the USDA Rural Development State Office no later than 4:30 p.m. (local time) on: First Quarter—September 30, 2020, Second Quarter—December 31, 2020, Third Quarter—March 31, 2021 and Fourth Quarter—June 30, 2021.

Set-Aside Funding Dates: The Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94) authorized set-aside funding to projects and intermediaries serving Federally-Recognized Native American Tribes, for Mississippi Delta Region Counties (as determined in accordance with Pub. L. 100-460). Eligible applicants for the set-aside funds must demonstrate that at least 75 percent of the benefits of an approved loan in this program will assist ultimate recipients in the designated areas. The completed application deadline for the Federally Recognized Native American

Tribes and Mississippi Delta Region Counties projects is May 31, 2021. Completed applications for the Rural Empowerment Zone/Enterprise Communities/Rural Economic Area Partnership projects must be submitted by July 15, 2021.

A. Program Description

1. *Purpose of the Program.* The purpose of the program is to provide direct loans to intermediaries that establish revolving loan programs for the purpose of providing loans to ultimate recipients for business facilities and community developments in a rural area as outlined in 7 CFR 4274.301(b). All applicable program requirements in their entirety can be found at 7 CFR part 4274 subpart D.

2. *Statutory Authority.* This program is authorized under the Consolidated Farm and Rural Development Act (ConAct) (7 U.S.C. 1936b *et seq.*) and 7 CFR part 4274, subpart D. Awards under the IRP program will be made on a competitive basis using specific selection criteria contained in 7 CFR 4274.344(c).

3. *Definition of Terms.* The definitions applicable to this notice are published at 7 CFR 4274.302(a).

4. *Application Awards.* The Agency will review, evaluate and score applications received in response to this notice based on the provisions found in 7 CFR 4274.343 and 4274.344, subpart D, and as indicated in this notice. However, the Agency advises that all interested parties bear the burden in preparing and submitting an application in response to the notice whether or not funding is appropriated for this Program in FY 2021.

B. Federal Award Information

Type of Award: Loan.

Fiscal Year Funds: FY 2021.

Available Funds: Anyone interested in submitting an application for funding under this Program is encouraged to consult the Rural Development Notices of Solicitation of Applications website at: <http://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas>.

Maximum Award: The Agency anticipates a maximum award of \$1 Million for eligible Intermediaries submitting a loan request.

Anticipated Award Dates—Regular Funding: First Quarter—November 30, 2020, Second Quarter—February 28, 2021, Third Quarter—May 31, 2021, Fourth Quarter—August 31, 2021.

Anticipated Award Date—Federally Recognized Native American Tribes and Mississippi Delta Region Counties Funding: June 15, 2021.

Anticipated Award Date—Empowerment Zones/Enterprise Communities/Rural Economic Area Partnership Funding: August 1, 2021.
Renewal or Supplemental Awards: None.

C. Eligibility Information

1. *Eligible Applicants*

Loans may be made to any entity that is identified by USDA Rural Development as an eligible borrower in accordance with 7 CFR 4274.307.

2. *Cost Share or Matching*

The IRP revolving fund share of the eligible project cost of an ultimate recipient's project funded under this Notice shall not exceed the lesser of: (a) \$250,000, or (b) 75 per cent of the total cost of the ultimate recipient's project for which the loan is being made. The cost share requirement shall be met by the intermediary in accordance with the requirements specified in 7 CFR 4274.331(b).

3. *Other*

Applications will only be accepted from eligible intermediaries that establish, or have established, revolving loan programs for the purpose of providing loans to ultimate recipients for business facilities and community developments in a rural area.

There are no "responsiveness" or "threshold" eligibility criteria for these loans. However, not more than one loan will be approved by the Agency for an intermediary in any single fiscal year unless the additional request is from this program's set-aside funding.

4. *Completeness Eligibility*

Applications will not be considered for funding if they do not provide enough information to determine eligibility, are not suitable for evaluation or are missing required elements as stated in 7 CFR 4274.343.

D. Application and Submission Information

1. *Address To Request Application Package*

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this notice, to obtain copies of the application package and also are encouraged to contact their respective Rural Development State office for an email contact so submit an electronic application prior to the submission deadline date(s). Please note that applicants may locate the downloadable application package for this program by

the Catalog of Federal Domestic Assistance Number, which is 10.767.

All applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1-866-705-5711 or online at <http://fedgov.dnb.com/webform>.

2. Content and Form of Submission

An application must contain all the required elements and each selection priority criterion outlined in 7 CFR 4274.343 must be addressed in the application. An original copy of the application must be filed with a Rural Development State Office for the state where the Intermediary is located.

The applicant documentation and forms needed for a complete application are located in 7 CFR 4274.343. There are no specific formats or limitations on the number of pages required for an application narrative, and applicants may request any Agency forms and addresses from the **ADDRESSES** section of this notice. Any form that requires an original signature, but is signed electronically in the application submission, must be signed in ink by the authorized person prior to the disbursement of funds.

3. Submission Dates and Times

Applications must be in the USDA Rural Development State Office by the dates and times as indicated above to compete for available funds in that fiscal quarter. If the due date falls on a Saturday, Sunday or federal holiday, the application is due the next business day. The Agency will determine the application receipt date based on the actual date postmarked.

E. Application Review Information

1. Criteria

All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in 7 CFR 4274.344(c). Failure to address any one of the criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

2. Review and Selection Process

The Rural Development State Offices will review applications to determine if they are eligible for assistance based on the requirements contained in 7 CFR part 4274, subpart D. If determined eligible, your application will be submitted to the National Office for funding competition with all eligible applications received by the application deadline. The Agency Administrator reserves the right to award additional

discretionary points under 7 CFR 4274.344(c)(6).

In order to distribute funds among the greatest number of projects possible, applications will be reviewed, organized and funded by ranking each state's highest-scoring project in order from highest to lowest subject for competition with ranked applications from other states for the available funding.

F. Federal Award Administration Information

1. Federal Award Notices

Successful applicants will receive notification for funding from the USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the loan award will be approved. An eligible application competing for regular IRP funds, but not selected, will be reconsidered in three subsequent quarterly funding competitions, for a total of four competitions, provided the application and eligibility requirements have not changed. After competing in four quarterly competitions, any unsuccessful applicant for regular funds will receive written notification indicating that their application will no longer be considered for funding. Applicants competing for set-aside funding have only one application period per fiscal year. Unsuccessful applicants for set-aside funding will receive written notification indicating that their application was not successful. An unsuccessful applicant for set-aside funding may elect, in writing, to submit their project for IRP regular fund competitions commencing with the next quarterly application period.

2. Administrative and National Policy Requirements

Additional requirements that apply to intermediaries selected for this Program can be found in 7 CFR part 4274, subpart D. All successful applicants will be notified by letter which will include a Letter of Conditions, and a Letter of Intent to Meet Conditions, which are not approval determinations. The loan will be considered approved when all conditions in the Letter of Conditions have been met and the Agency obligates the funding for the Project.

In addition, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-

282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

Intermediaries must collect and maintain data provided by Ultimate Recipients on race, sex, and national origin and ensure Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity" (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the Ultimate Recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

G. Other Information

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this notice is approved by OMB under OMB Control Number 0570-0070.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at (866) 705-5711 or online at <http://fedgov.dnb.com/webform>. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA Programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior

civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed complaint form or complaint letter to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Email*: program.intake@usda.gov.
USDA is an equal opportunity provider, employer, and lender.

Rebeckah Adcock,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020-26771 Filed 12-4-20; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; American Community Survey Methods Panel Tests

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize

the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 17, 2017 (Vol. 82, No. 221, p. 54317-54320) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: American Community Survey Methods Panel Tests: Regional Office internet Letter Test and Initial Mailing Pressure Seal Test.

OMB Control Number: 0607-0936.

Form Number(s): ACS-1, ACS internet, ACS CAPI.

Type of Request: Regular submission. Request for a Nonsubstantive Change of a Currently Approved Collection.

Number of Respondents: 182,400.

Average Hours per Response: 40 minutes.

Burden Hours: No additional burden hours are requested under this submission.

Needs and Uses: The American Community Survey (ACS) collects detailed socioeconomic data from about 3.5 million housing units in the United States and 36,000 in Puerto Rico each year. The ACS also collects detailed socioeconomic data from about 195,000 residents living in group quarters. Residents of sampled housing units are invited to self-respond to the ACS through a series of up to five mailings, sent over a period of approximately six and a half weeks. The Census Bureau selects a subsample of the housing units that do not respond by internet, mail, or through the Telephone Questionnaire Assistance (TQA). This subsample of housing units is assigned to the Computer-Assisted Personal Interview (CAPI) nonresponse follow-up data collection mode. During CAPI, field representatives call or visit these subsampled addresses to attempt to complete an interview.

An ongoing data collection effort with an annual sample of this magnitude requires that the ACS continue research, testing, and evaluations aimed at reducing respondent burden, improving data quality, reducing data collection costs, and improving the ACS questionnaire content and related data collection materials. The ACS Methods Panel is a research program designed to address and respond to issues and survey needs. This request documents two Methods Panel tests: The Initial Mailing Pressure Seal Test and the Regional Office internet Letter Test.

The Initial Mailing Pressure Seal Test is designed to test the use of a pressure seal mailer in the first mailing sent to sampled housing units. The purpose of the test is to understand the effect on self-response of sending a pressure seal

mailer instead of the initial mail package that is currently sent. Evidence from mailings sent in 2020 suggest that the pressure seal mailer may be more effective at soliciting an internet response than a mail package containing a letter, brochure, and instruction card. However, several confounding factors could have caused an increase in self-response other than the mail type. First, the 2020 Census was conducting the nonresponse follow-up operation and advertising about the importance of responding to the 2020 Census, which some respondents confuse with the ACS. Second, the initial mail package lets respondents know that if they are unable to complete the survey online, then we will send a paper questionnaire in a few weeks. This message was omitted from the pressure seal mailer. Because of the coronavirus pandemic, we were unable to mail paper ACS questionnaires to all nonresponding households. We theorize that telling respondents that they will have another opportunity to respond later delays response. Finally, the internet User ID in the initial mail package is included on the instruction card, not in the letter. In the pressure seal mailer, the User ID is included very clearly in a call-out box. We theorize that making the log-in instructions clear and easy to find increases internet response.

The proposed test will include four experimental treatments and a control: An initial mail package (control), a modified initial mail package, and three variations of the pressure seal mailer. Addresses not part of the test will receive the initial mail package. The experimental design of this test allows the Census Bureau to assess the impact of using a pressure seal mailer instead of an initial mail package and how information about a paper questionnaire being mailed impacts response rates.

To field this test, the Census Bureau plans to use the ACS production sample (clearance number: 0607-0810). Thus, there is no increase in burden from this test since each treatment will include the same number of mailings and result in the same burden estimate per interview (40 minutes). The Census Bureau proposes this test to be conducted in late spring or summer of 2021 (pending operational constraints) and adhere to the same data collection protocols as production ACS.

The ACS sample design randomly assigns housing units in each monthly sample panel to one of 24 groups of approximately 12,000 addresses each. Each group, called a methods panel group, is representative of the full monthly sample. Each monthly sample is a representative subsample of the

entire annual sample and is representative of the sampling frame. The Census Bureau proposes to use two randomly selected methods panel groups for each treatment. Hence, each treatment will have a sample size of approximately 24,000 addresses. In total, approximately 96,000 addresses will be used for the four experimental treatments and 24,000 for the control. The remaining ACS sample will receive production materials.

The Census Bureau proposes to evaluate the experimental treatments by comparing self-response rates overall and by mode. For each comparison, a two-tailed t-test will be used to measure the impact on the evaluation measure in either direction with 80 percent power at the $\alpha = 0.1$ level. The sample size will be able to detect differences of approximately 1.74 percentage points between the self-response return rates between two experimental treatments. To assess the costs of implementing any of the experimental treatments, we will also conduct a cost analysis.

The Regional Office internet Letter Test is designed to test content changes to a letter used to encourage online self-response during CAPI. This letter is sent as a pressure-seal mailer from the Census Bureau's National Processing Center to all mailable sampled addresses in the CAPI universe.

The changes to the pressure seal letter proposed for this test are (1) the message on the outside of the pressure seal mailer (options include either a "Past Due" message or "Required by Law") and (2) whether to include information about TQA as a response option, or only mention the internet. The experimental design isolates each of the content factors being studied. There is one control, which uses production materials, and three experimental treatments.

To field this test, the Census Bureau plans to use the ACS production sample (clearance number: 0607-0810). There is no increase in burden from this test because each treatment will include the same number of mailings and result in the same burden estimate per interview (40 minutes). The Census Bureau proposes that this test be conducted in the summer of 2021 (pending operational constraints) and adhere to the same data collection protocols as production ACS.

The Census Bureau proposes to use six randomly selected methods panel groups for each treatment. Each treatment will have a sample size of approximately 15,600 addresses. In total, approximately 46,800 addresses will be used for the three experimental treatments and 15,600 for the control.

All mailable CAPI cases are included in the experiment.

The Census Bureau proposes to evaluate the experimental treatments by comparing self-response rates during CAPI and overall CAPI response rates, as well as refusal rates and other interview outcomes. The TQA call volume will also be monitored. For each comparison, a two-tailed test will be used so that the Census Bureau can measure the impact on the evaluation measure in either direction with 80 percent power at the $\alpha = 0.1$ level. The sample size will be able to detect differences of approximately 1.74 percentage points between the self-response return rates between two experimental treatments. A cost analysis will also be conducted.

Affected Public: Individuals or households.

Frequency: One-time tests as part of the monthly American Community Survey.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141, 193, and 221.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the collection or the OMB Control Number 0607-0936.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020-26824 Filed 12-4-20; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The International Trade Administration published a document in the **Federal Register** of November 6, 2020, concerning the final results of the administrative review of circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) for the period of review of November 1, 2017 through October 31, 2018. The document contained an incorrect spelling.

FOR FURTHER INFORMATION CONTACT: Andre Gziryan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2201.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of November 6, 2020, in FR Doc 2020-24722, on page 71057, in the second column, correct Appendix II (List of Companies Not Individually Examined), number 22, to read "Ycp Co."¹

This correction to the *Final Results* is published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: November 19, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020-26181 Filed 12-4-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-916]

Laminated Woven Sacks From the People's Republic of China: Final Results of the Administrative Review of the Antidumping Duty Order; 2018-2019

AGENCY: Enforcement and Compliance International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that the 20 companies subject to the administrative review of the antidumping duty (AD) order on laminated woven sacks (LWS) from the

¹ *Id.* This respondent's name was similarly misspelled in the initiation notice and preliminary results. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 2159 (February 6, 2019); see also *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2719 (January 16, 2020).

People's Republic of China (China) are part of the China-wide entity because none of the companies filed a separate rate application (SRA) or separate rate certification (SRC). The period of review (POR) is August 1, 2018 through July 31, 2019.

DATES: Applicable December 7, 2020.

FOR FURTHER INFORMATION CONTACT: Nicolas Mayora, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3053.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2020, Commerce published the *Preliminary Results* of the administrative review of the AD order on LWS from China, wherein we preliminarily determined that the 20 companies subject to the review are part of the China-wide entity because none of the companies filed an SRA or SRC.¹ We invited parties to submit comments on the *Preliminary Results*. No party submitted comments. Accordingly, the final results remain unchanged from the *Preliminary Results*.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.² On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.³ The deadline for the final results of this review is now December 3, 2020.

Scope of the Order

The merchandise covered by the order is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (BOPP) or to an exterior ply of paper that is suitable for high

quality print graphics;⁴ printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. Laminated woven sacks are also classifiable under HTSUS 6305.33.0040. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

Final Results of Review

Commerce preliminarily determined that none of the 20 companies subject to this review demonstrated eligibility for separate rate status. Thus, each company was found to be part of the China-wide entity.⁵ A list of these companies is in the attached appendix.

As noted above, no interested party submitted comments on Commerce's preliminary findings. As such, we made no changes from the *Preliminary Results*. Therefore, as a result of this review, we continue to treat all 20 companies subject to this review as part of the China-wide entity. The weighted average dumping margin for the China-wide entity is 91.73 percent.⁶

Assessment

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). These final results of review remain unchanged from the *Preliminary Results*. We will instruct CBP to apply the China-wide entity *ad valorem* assessment rate of 91.73 percent to all entries of subject merchandise during the POR that were exported by the companies identified in the appendix to this notice. Commerce intends to issue assessment instructions 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of LWS from China entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For previously-investigated or reviewed Chinese and non-Chinese companies not under review in this segment that received a separate rate in prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company participated; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that established for the China-wide entity, which is 91.73 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received

¹ See *Laminated Woven Sacks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2018-2019*, 85 FR 21388 (April 17, 2020) (*Preliminary Results*).

² See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

⁴ "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

⁵ See *Preliminary Results*, 85 FR at 21389.

⁶ See *Laminated Woven Sacks from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Determination Under Section 129 of the Uruguay Round Agreements Act*, 81 FR 23457 (April 21, 2016); see also *Notice of Antidumping Duty Order: Laminated Woven Sacks from the People's Republic of China*, 73 FR 45941 (August 7, 2008); *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 77 FR 52683 (August 30, 2012).

their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter with the subject merchandise. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the term of an APO is a violation subject sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h).

Dated: November 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Companies Covered by This Review

1. Cangnan Color Make The Bag
2. Changle Baodu Plastic Co., Ltd.
3. First Way (H.K.) Limited
4. Han Shing Chemical Co., Ltd.
5. Jiangsu Hotson Plastics Co., Ltd.
6. Ningbo Yong Feng Packaging Co., Ltd.
7. Polywell Industrial Co.
8. Polywell Plastic Product Factory
9. Shandong Longxing Plastic Products Company Ltd.
10. Shandong Qikai Plastics Product Co., Ltd.
11. Shandong Qilu Plastic Fabric Group, Ltd.
12. Shandong Shouguang Jianyuan Chun Co., Ltd.
13. Shandong Youlian Co., Ltd.
14. Wenzhou Hotson Plastics Co., Ltd.
15. Zibo Aifudi Plastic Packaging Co., Ltd.
16. Zibo Linzi Luitong Plastic Fabric Co., Ltd.

17. Zibo Linzi Qitianli Plastic Fabric Co., Ltd.
18. Zibo Linzi Shuaiqiang Plastics Co., Ltd.
19. Zibo Linzi Worun Packing Product Co., Ltd.
20. Zibo Qigao Plastic Cement Co., Ltd.

[FR Doc. 2020–26831 Filed 12–4–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of the Second Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping as indicated in the "Final Results of Sunset Review" section of this notice.

DATES: Applicable December 7, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Williams or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5166 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on diamond sawblades from China was published on November 4, 2009.¹ In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received a notice of intent to participate in this sunset review from Diamond Sawblades Manufacturers' Coalition (the petitioner) within 15 days after the date of publication of the *Initiation Notice*.² The petitioner claimed interested party status under sections 771(9)(C) and (F) of the Tariff Act of 1930, as amended (the Act).

Commerce received an adequate substantive response to the *Initiation*

¹ See *Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 FR 57145 (November 4, 2009).

² See *Initiation of Five-Year ("Sunset") Review*, 85 FR 47185 (August 4, 2020) (*Initiation Notice*).

Notice from the domestic interested party within the 30-day period specified in 19 CFR 351.218(d)(3)(i). Commerce received no substantive response from any respondent interested parties. In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited, *i.e.*, 120-day, sunset review of the antidumping duty order on diamond sawblades from China.

Scope of the Order

The merchandise subject to the order is diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS) and may also enter under 6804.21.00. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.³

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of dumping margins likely to prevail if the order was revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Issues and Decision Memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be found at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the antidumping duty order on diamond sawblades from China would be likely to lead to continuation or recurrence of dumping

³ See Memorandum, "Issues and Decision Memorandum for the Final Results of Expedited Second Sunset Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China," dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

at weighted-average margins up to 164.09 percent.

Notification to Interested Parties

This notice serves as a 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). Timely written notification of the 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.

Commerce is issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.221(c)(5)(ii).

Dated: November 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. History of the Order
- V. Legal Framework
- VI. Discussion of the Issues
- VII. Final Results of Second Expedited Sunset Review
- VIII. Recommendation

[FR Doc. 2020-26828 Filed 12-4-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-895]

Certain Crepe Paper Products From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain crepe paper products from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Sunset Review" section of this notice.

DATES: Applicable December 7, 2020.

FOR FURTHER INFORMATION CONTACT:

Robert Galantucci, AD/CVD Operations, Office V, Enforcement and Compliance,

International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2923.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 2005, Commerce published in the **Federal Register** the AD order on crepe paper products from China.¹ On August 4, 2020, Commerce published the notice of initiation of the third sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On August 10, 2020, Commerce received a notice of intent to participate from Seaman Paper Company of Massachusetts, Inc. (Seaman Paper), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ Seaman Paper claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product in the United States.

On September 3, 2020, Commerce received an adequate substantive response to the *Initiation Notice* from Seaman Paper within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ We received no substantive responses from respondent interested parties. On September 30, 2020, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.⁵ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

Scope of the Order

For purposes of the *Order*, the term "certain crepe paper" includes crepe paper products that have a basis weight not exceeding 29 grams per square meter prior to being creped and, if appropriate, flame-proofed. Crepe paper has a finely wrinkled surface texture and typically but not exclusively is treated to be flame-retardant. Crepe paper is typically but not exclusively

¹ See *Antidumping Duty Order: Certain Crepe Paper from the People's Republic of China*, 70 FR 3509 (January 25, 2005) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 47185 (August 4, 2020) (*Initiation Notice*).

³ See Seaman Paper's Letter, "Certain Crepe Paper from the People's Republic of China: Notice of Intent to Participate in Review," dated August 10, 2020.

⁴ See Seaman Paper's Letter, "Certain Crepe Paper from China: Substantive Response to Notice of Initiation of Sunset Review," dated September 3, 2020.

⁵ See Commerce's Letter, "Sunset Reviews Initiated on August 4, 2020," dated September 30, 2020.

produced as streamers in roll form and packaged in plastic bags. Crepe paper may or may not be bleached, dye colored, surface-colored, surface decorated or printed, glazed, sequined, embossed, die-cut, and/or flame retardant. Subject crepe paper may be rolled, flat or folded, and may be packaged by banding or wrapping with paper, by placing in plastic bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of crepe paper subject to this order may consist solely of crepe paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be entered under one or more of several different HTSUS subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4818.90; 4823.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum,⁶ which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are (1) the likelihood of continuation or recurrence of dumping and (2) the magnitude of the margins likely to prevail if the *Order* were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely lead to the continuation or

⁶ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Certain Crepe Paper from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

recurrence of dumping and that the magnitude of the margins likely to prevail if the *Order* were revoked is up to 266.83 percent.⁷

Administrative Protective Order (APO)

This notice serves as the only reminder to interested parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: December 1, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020-26830 Filed 12-4-20; 8:45 am]

BILLING CODE 3510-DS-P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, December 9, 2020; 11:00 a.m.

PLACE: This meeting will be conducted by remote means.

STATUS: Commission Meeting—Closed to the Public.

MATTERS TO BE CONSIDERED: Staff will brief the Commission on various compliance matters.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7479 (Office) or 240-863-8938 (cell).

Dated: December 2, 2020.

Alberta E. Mills,

Secretary.

[FR Doc. 2020-26895 Filed 12-3-20; 11:15 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Science and Technology Reinvention Laboratory Personnel Demonstration Project Program

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: This notice provides new authorities to all Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration (Demo) Projects.

SUMMARY: STRLs may implement innovative approaches to attract and retain exceptional talent. The flexibilities described herein allow the STRLs to better manage their workforce and applicant pools by providing: A streamlined approach to receiving applications; an efficient process for determining whether applicants are qualified; flexibility to set an entrance on duty date prior to receipt of an applicant's official transcript; an additional direct hiring authority; a flexible-length and renewable-term appointment authority for positions providing direct support to the STRL; an increase in the maximum student loan repayment amount; and the ability to waive the completion of a background investigation prior to employment in a Special-Sensitive position.

DATES: Implementation of this **Federal Register** notice will begin no earlier than December 7, 2020.

FOR FURTHER INFORMATION CONTACT:

Department of the Air Force:

- Air Force Research Laboratory: Ms. Rosalyn Jones-Byrd, 937-656-9747, *Rosalyn.Jones-Byrd@us.af.mil*.

- Joint Warfare Analysis Center: Ms. Amy Balmaz, 540-653-8598, *Amy.T.Balmaz.civ@mail.mil*.

Department of the Army:

- Army Research Institute for the Behavioral and Social Sciences: Dr. Scott Shadrick, 254-288-3800, *Scott.B.Shadrick.civ@mail.mil*.

- Combat Capabilities Development Command Armaments Center: Mr. Mike Nicotra, 973-724-7764, *Michael.J.Nicotra.civ@mail.mil*.

- Combat Capabilities Development Command Army Research Laboratory: Mr. Christopher Tahaney, 410-278-9069, *Christopher.S.Tahaney.civ@mail.mil*.

- Combat Capabilities Development Command Aviation and Missile Center: Ms. Nancy Salmon, 256-876-9647, *Nancy.C.Salmon2.civ@mail.mil*.

- Combat Capabilities Development Command Chemical Biological Center:

Ms. Patricia Milwicz, 410-417-2343, *Patricia.L.Milwicz.civ@mail.mil*.

- Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center: Ms. Angela Clybourn, 443-395-2110, *Angela.M.Clybourn.civ@mail.mil*.

- Combat Capabilities Development Command Ground Vehicle Systems Center: Ms. Jennifer Davis, 586-306-4166, *Jennifer.L.Davis1.civ@mail.mil*.

- Combat Capabilities Development Command Soldier Center: Ms. Joelle Montecalvo, 508-206-3421, *Joelle.K.Montecalvo.civ@mail.mil*.

- Engineer Research and Development Center: Ms. Patricia Sullivan, 601-634-3065, *Patricia.M.Sullivan@usace.army.mil*.

- Medical Research and Development Command: Ms. Linda Krout, 301-619-7276, *Linda.J.Krout.civ@mail.mil*.

- Technical Center, Space and Missile Defense Command: Dr. Chad Marshall, 256-955-5697, *Chad.J.Marshall.civ@mail.mil*.

Department of the Navy:

- Naval Air Warfare Center, Weapons Division and Aircraft Division: Mr. Richard Cracraft, 760-939-8115, *Richard.Cracraft@navy.mil*.

- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center: Ms. Lori Leigh, 805-901-5917, *Lori.Leigh@navy.mil*.

- Naval Information Warfare Centers:
 - Naval Information Warfare Center Atlantic: Mr. Michael Gagnon, 843-218-3871, *Michael.L.Gagnon@navy.mil*.

- Naval Information Warfare Center Pacific: Ms. Angela Hanson, 619-553-0833, *Angela.Hanson@navy.mil*.

- Naval Medical Research Center: Dr. Richard Arnold, 937-938-3877, *Richard.Arnold.10@us.af.mil*.

- Naval Research Laboratory: Ms. Ginger Kisamore, 202-767-3792, *Ginger.Kisamore@nrl.navy.mil*.

- Naval Sea Systems Command Warfare Centers: Ms. Diane Brown, 215-897-1619, *Diane.J.Brown@navy.mil*.

- Office of Naval Research: Ms. Margaret J. Mitchell, 703-588-2364, *Margaret.J.Mitchell@navy.mil*.

DoD:

- Dr. Jagadeesh Pamulapati, Director, Laboratories and Personnel Office, 571-372-6372, *Jagadeesh.Pamulapati.civ@mail.mil*.

SUPPLEMENTARY INFORMATION:

1. Background

Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.)

⁷ *Id.*

103–337, as amended by section 1109 of the NDAA for FY 2000, Public Law 106–65, section 1114 of the NDAA for FY 2001, Public Law 106–398, and section 211 of the NDAA for FY 2017, Public Law 114.328 (10 U.S.C. 2358 note), authorizes the Secretary of Defense (SECDEF), through the USD(R&E), to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLS). All STRLS authorized by section 1105 of the NDAA for FY 2010, Public Law 111–84 (10 U.S.C. 2358 note), as amended by section 1104 of the NDAA for FY 2018, Public Law 115–91 (10 U.S.C. 2358 note), as well as any newly designated STRLS authorized by the SECDEF or future legislation, may use the provisions described in this **Federal Register** Notice (FRN). STRLS implementing these flexibilities must have an approved personnel demonstration project plan published in an FRN and must fulfill any collective bargaining obligations. Each STRL will establish internal operating procedures (IOPs) as appropriate.

The 20 current STRLS are:

- Air Force Research Laboratory
- Joint Warfare Analysis Center
- Army Research Institute for the Behavioral and Social Sciences
- Army Research Laboratory
- Combat Capabilities Development Command Armaments Center
- Combat Capabilities Development Command Aviation and Missile Center
- Combat Capabilities Development Command Chemical Biological Center
- Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center
- Combat Capabilities Development Command Ground Vehicle Systems Center
- Combat Capabilities Development Command Soldier Center
- Engineer Research and Development Center
- Medical Research and Development Command
- Technical Center, U.S. Army Space and Missile Defense Command
- Naval Air Warfare Center
- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center
- Naval Information Warfare Centers, Atlantic and Pacific
- Naval Medical Research Center
- Naval Research Laboratory
- Naval Sea Systems Command Warfare Centers

- Office of Naval Research

2. Summary of Comments

On September 16, 2020 (85 FR 57842–57847), the Department of Defense published a notice titled “Department of Defense Science and Technology Reinvention Laboratory Personnel Demonstration Project Program” for a 30-day public comment period. The public comment period ended on October 16, 2020. No public comments were received.

3. Overview

1. Introduction

A. Purpose

This notice provides new personnel management flexibilities designed to enable the STRLS to be more agile and competitive in attracting, hiring, and continuously shaping world-class candidates in science, technology, engineering, and mathematics (STEM) career fields and in career fields that directly support the STRL mission. This FRN describes several flexibilities that support these innovative approaches to the Federal hiring process including:

(1) Authority to utilize an alternative method to announcing position vacancies.

(2) Authority to modify Office of Personnel Management (OPM) policies when determining a combination of experience and education is qualifying for science and engineering (S&E) positions.

(3) Authority to establish an entrance on duty (EOD) date prior to receipt of official college transcripts.

(4) Authority to utilize direct hire for any position (1) involving 51 percent or more of time in direct support of the STRL mission; (2) identified by the STRL as hard to fill; (3) having a history of high turnover; or (4) requiring a unique, laboratory-related skillset.

(5) Authority to appoint candidates to flexible-length or renewable-term positions that provide direct support to the STRL.

(6) Authority to offer flexible and meaningful student loan repayment options that keep up with college tuition inflation rates.

(7) Authority to make a final job offer and establish an EOD prior to a final favorable eligibility determination at the Top Secret/Sensitive Compartmented Information (SCI) level.

B. Required Waivers to Law and Regulation

Waivers and adaptations of certain title 5, U.S. Code (U.S.C.), and title 5, Code of Federal Regulations (CFR), provisions are required only to the

extent that these statutory and regulatory provisions limit or are inconsistent with the actions authorized under these demonstration projects. Appendix A lists waivers needed to enact authorities described in this FRN. Nothing in this plan is intended to preclude the STRLS from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this FRN.

C. Problems With the Present System and Expected Benefits

(1) Despite the authorities already established for the STRLS, it is difficult to find and attract specialized talent in high-demand STEM and direct support career fields as they compete with other Government agencies, industry, and academia. The STRLS have difficulty hiring elite talent because of long, arbitrary, and layered processes, unlike their industry counterparts, who are able to pay more, hire faster, and be more agile.

USAJobs creates a hindrance as the STRLS try to attract highly sought after talent, both external and internal to the Federal government. Candidates must search through pages of opportunities, which may or may not lead to STRL opportunities; job advertisements often lack luster in description; and candidates face a long application process if they do apply to opportunities. This, coupled with the extensive onboarding process, creates a huge deterrent as the STRLS compete to attract top-tier talent.

In order for STRLS to obtain a competitive edge in the battle for talent, it is imperative that they have an expedited, simpler method for finding interested candidates and ensuring their resumes are seen by hiring managers. USAJobs flyer job announcements for direct hire and reassignment opportunities will direct the applicants to the hiring STRL without having to apply through the lengthy USAJobs process and the Component’s application process.

(2) Many STRL S&E positions are considered interdisciplinary in nature as different skillsets are equally relevant to the work. Additionally, OPM classification and qualification standards are not kept up to date with newer career fields, emerging technologies, and changing skill requirements. The ability to hire based on demonstrated skillsets instead of degrees attained for specific occupational series will enable the STRLS to focus on hiring talent versus credentials.

The OPM “General Schedule Qualifications Policies” describe a

method of qualifying a candidate based on demonstrated skills when the candidate does not meet educational requirements. As provided by paragraph 4.g. in the “Application of Qualification Standards” section, “Educational and Training Provisions or Requirements” subsection, a comprehensive evaluation of the applicant’s entire background is made by a panel of at least two individuals with professional standing in the field.

In an effort to reduce the time it takes to establish a panel and hold the review, one subject matter expert (SME) will be considered sufficient to qualify the applicant for STRL positions. STRL managers with direct knowledge of the mission, regardless of their occupational series or military occupation codes, will be considered SMEs for purposes of determining qualifications under this authority.

(3) S&E positions have positive education requirements that must be verified by the hiring authorities. Servicing personnel offices typically request unofficial transcripts or a letter from the registrar from applicants in the beginning stages of the hiring process in order to make preliminary qualification determinations. Applicants must wait to receive their start dates until after their official transcripts have been received and reviewed.

On average, it takes approximately two weeks to receive transcripts through postal mail and one week to receive electronic transcripts. Both timeframes increase significantly if transcripts are lost or the electronic transcript codes are unknowingly sent to a junk email box. New college graduates face even longer delays as generally there is a four- to six-week delay in obtaining their official transcripts after graduation. At the same time, discrepancies between an official transcript and the unofficial or registrar letter confirming completion of degree requirements occur extremely rarely.

In order for STRLs to compete better with industry and academia, this FRN authorizes STRLs to hire candidates using unofficial transcripts or a letter from the registrar’s office stating the student is in the final semester and providing the expected completion/graduation date. These new hires will be required to provide official transcripts within 30 calendar days after they report to duty. This will allow the STRLs to complete the hiring in a parallel versus serial approach, which will significantly reduce the length of the hiring process. If official transcripts are not provided or fail to show proof of the required qualification

requirements, individuals may be removed.

(4) STRLs are not just pursuing scientific and engineering talent, but all talent, ensuring there are always qualified staff to support the mission. Strong support staff are essential to ensuring the STRLs are prepared to maintain and advance technology. In addition to the direct hire authorities authorized for S&E positions, the STRLs need to utilize a direct hire authority to recruit for positions that directly support the unique STRL missions, are identified by the STRLs as hard to fill, have a history of high turnover, or require unique, laboratory-related skillsets. For example, recruitment and retention of qualified police officers and security guards have become critical issues for some STRLs. Remote sites must be properly protected by qualified personnel to ensure there is not a mission failure resulting from insufficient protection of property and personnel. The ability to use a direct hire authority for support positions will greatly reduce the hiring timelines and allow for more streamlined hiring processes to promptly place personnel into critical support positions.

(5) STRLs need the ability to shape the mix of skills and expertise in the entire workforce to meet organizational and Department-designated missions in the most cost-effective and efficient manner; to shape the workforce to better respond to such missions; and to reduce the average unit cost of the workforce. Component and DoD-level drawdowns sometimes prevent STRLs from hiring even though the STRLs have funding and industrially funded missions. Typical term appointments, while limited in length, may provide a means to hire during these times.

Similar to the flexible-length and renewable-term technical appointment authority provided in section 1109 of the FY 2016 NDAA, as amended and documented in 82 FR 43339, STRLs need the ability to appoint qualified candidates to positions providing direct support to their missions for a period of more than one year, but not more than six years, with the ability to extend in up to six-year increments. This flexible-length and renewable-term appointment authority will give the STRLs the ability to attract candidates who are willing to accept such flexible assignments, and employees will be given benefits similar to those received by the career workforce.

(6) The average cost for a four-year undergraduate degree can range from \$40,000 for in-state tuition and fees at a public university or college to over \$225,000 for an Ivy League degree.

Advanced degrees add significantly to these costs. The current allowable Student Loan Repayment Program (SLRP) amount, established in 2003, has a maximum of \$60,000, paid in \$10,000 increments. The average annual inflation rate between 2000 and 2019 for in-state college tuition was 5.13 percent. To remain in line with inflation, and to stay competitive with private industry and academia, the SLRP amount should be over \$100,000. At the present SLRP amount, industry is willing to buy out a Federal employee’s service agreement in order to entice them to come work for them.

The authority to offer a SLRP up to \$125,000 in up to \$25,000 yearly installments will provide a meaningful student loan repayment program that may provide the STRLs the ability to recruit, hire, and retain top talent. The Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)) may adjust this amount as necessary to maintain competitiveness with industry and academia and to continue to enable the STRLs to attract and recruit top talent.

(7) The present method for obtaining security eligibility for an SCI position is slow and time consuming. Currently, final job offers cannot be extended to candidates for Special-Sensitive positions without their first obtaining a final favorable eligibility determination at the SCI level.

Title 5 CFR 1400.202 prohibits an organization from waiving the security requirements for candidates being selected for these Special-Sensitive positions. This exclusion significantly delays the timeline for hiring a person into a Special-Sensitive position. Average time to complete a Special-Sensitive security investigation is well over a year. This constrains the STRL’s ability to complete its mission; causes strain and burnout on the rest of the personnel as they try to fill in for manning gaps; and deters top-tier talent from applying to positions.

The authority to make a final job offer and establish an EOD prior to a final favorable eligibility determination at the Top Secret/SCI level will provide STRLs the ability to make timely job offers.

D. Participating Organizations and Employees

All DoD laboratories designated as STRLs under section 1105 of the NDAA for FY 2010, Public Law 111–84, as amended by section 1105 of the NDAA for FY 2015, Public Law 113–291, and section 1104 of the NDAA for FY 2018, Public Law 115–91 (10 U.S.C. 2358 note), including any newly designated STRLs authorized by the SECDEF or by

future legislation, with approved personnel demonstration project plans published in FRNs may use the provisions described in this FRN.

II. Personnel System Changes

A. Description and Implementation

(1) Use of USAJobs Flyers

STRLs have authority to determine when to utilize USAJobs flyers to solicit for STRL positions. Applications may be submitted directly to the human resources liaison in the STRL.

Candidates may apply through the link or email address found in the flyer. Postings may be open to internal Government employees and external U.S. citizen candidates. All candidates will be asked to submit supporting documentation to include a resume and official or unofficial transcripts. Flyers will include the following (1) open/close dates, (2) compensation, (3) appointment type and work schedule, (4) duty location, (5) duties, (6) position information, (7) conditions of employment, (8) qualification requirements, (9) education requirements, (10) how candidates will be evaluated, (11) benefits, (12) how to apply, (13) an equal employment opportunity statement, and (14) any additional information determined necessary by the STRL.

a. Positions may be filled through direct hire authorities on a temporary, term, or permanent basis or through reassignment utilizing the USAJobs flyer. When documenting direct hire actions, cite the first legal authority code (LAC)/legal authority for all permanent, term, temporary, or special demonstration project appointments as Z2U/Public Law 103–337. The second LAC/legal authority will be cited as the appropriate direct hire authority, Z5C/Direct Hire Authority (appropriate legal authority).

b. When documenting reassignment actions, cite the LAC/legal authority as Z2U/Public Law 103–337.

(2) Hiring Demonstrated Exceptional Talent Versus Credentials

As provided by OPM “General Schedule Qualification Standards,” paragraph 4.g., in the “Application of Qualification Standards” section, “Educational and Training Provisions or Requirements” subsection, STRLs may consider demonstrated exceptional experience or a combination of experience and education in lieu of a candidate’s meeting OPM individual occupational qualification requirements for S&E positions. Utilizing the STRL modification to this provision, the STRLs may use one SME, instead of a

panel of at least two, to conduct a comprehensive evaluation of an applicant’s entire background, with full consideration given to both education and experience, to determine a candidate’s qualifications. In addition, the unique nature of STRL interdisciplinary positions allows for an STRL manager with direct knowledge of the mission and position requirements, regardless of his or her occupational series or military occupation code, to serve as a SME to represent the needs of the organization.

Demonstrated exceptional experience is defined as experience that reflects significant accomplishment directly applicable to the position to be filled. This is evinced through a substantial record of experience, achievement, and/or publications that demonstrate expertise in an appropriate professional/scientific field. A written analysis by the SME will document the candidate’s experience, achievements, and publications used for qualification determination.

Documentation justifying the employee’s qualifications will be placed in the employee’s electronic official personnel file (e-OPF) to ensure the employee is considered qualified for the specific occupational series in the future.

(3) Official transcripts

The requirement to have official transcripts prior to establishing an EOD is waived. STRLs and servicing personnel offices may use unofficial transcripts or a letter from a registrar or dean to make qualification determinations, thus eliminating several days or weeks from the current hiring timeline. Official transcripts must be received within 30 calendar days after EOD.

Once unofficial transcripts or a letter from a registrar or dean is received, the servicing personnel office will review qualifications and begin the onboarding process. Applicants will be asked to request and submit official transcripts to the servicing personnel office, but an EOD may be established prior to receipt. Applicants will sign a statement of understanding (SOU) as part of their pre-employment paperwork. Risk is low and mitigated by requiring applicants to sign the SOU prior to their EOD. The SOU will include language stipulating that if official transcripts are not provided or fail to show proof that individuals meet the qualification requirements, individuals may be subject to adverse actions up to and including removal, as determined by specific circumstances by applicable regulations.

The SOU will regulate the applicants who do not have the degrees required for the positions or who may have been dishonest during the hiring process. The SOU will be maintained in the employee’s e-OPF. Once official transcripts have been received by the servicing personnel office, they will be verified in the personnel system and uploaded into the employee’s e-OPF.

(4) Direct Hire Authority

STRLs may appoint qualified candidates to those positions that involve 51 percent or more of time spent in direct support of STRL activities; that are identified by the STRLs as hard to fill; that have a history of high turnover; or that require unique, laboratory-related skillsets, without regard to the provisions of 5 U.S.C. chapter 33, subchapter I (excluding sections 3303, 3308, and 3328 of such title), as determined by the STRL director.

a. Use of this appointment authority must comply with merit system principles.

b. Appointments may be made on permanent, term, or temporary basis.

c. When documenting personnel actions, cite the first LAC/legal authority for all permanent, term, temporary, or special demonstration project appointments as Z2U/Public Law 103–337. The second LAC/legal authority will be cited as Z5C/Direct Hire Auth (STRL-Direct Support) (with appropriate legal authority once assigned.)

d. STRLs will document requirements for how positions qualify for usage of this authority in their IOPs.

e. STRL positions not classified under the broad banding structure will be listed in IOPs.

(5) Flexible-Length and Renewable-Term Appointments for Support Positions

STRLs may use flexible-length and renewable-term appointments to appoint qualified candidates whose positions involve 51 percent or more of time spent in direct support of STRL activities for a period of more than one year but not more than six years. The appointment of any individual under this authority may be extended without limit in up to six-year increments at any time during any term of service under conditions set forth by the STRL director. The provisions described in 82 FR 43339, II.A.1., apply to appointments made under this authority.

(6) Student Loan Repayment

STRLs may provide student loan repayment options that are in line with current tuition costs and adjusted based

on inflation without higher level approval. This authority provides an STRL the ability to repay all or part of an outstanding qualifying student loan or loans previously taken out by a current STRL employee or a candidate to whom an offer of employment has been made.

Beginning in 2020, the amount of student loan repayment benefits provided by an STRL is subject to both of the following limits:

a. Up to \$25,000 per employee per calendar year.

b. A total of \$125,000 per employee.

OUSD(R&E) may increase these amounts as deemed necessary to stay competitive with private industry and academia. Eligibilities, conditions, qualifying student loans, and required service agreements remain the same as found in 5 CFR part 537. Loan payments made by an STRL under this part do not exempt an employee from his or her responsibility and/or liability for any loan(s) the individual has taken out. The employee is responsible for any income tax obligations resulting from the student loan repayment benefit.

(7) Security Eligibility

STRLs have authority to appoint individuals to Critical-Sensitive (CS)

and Special-Sensitive positions prior to a final favorable eligibility determinations at the Top Secret/SCI level. Processes and pre-employment waiver requirements similar to those afforded CS positions will be applied in these situations. For the purposes of STRLs, an emergency or national interest that necessitates an appointment prior to the completion of the investigation and adjudication process includes an STRL's inability to meet mission requirements. Each applicant's Standard Form 86 "Questionnaire for National Security Positions," fingerprints, and pre-screen questionnaire will be reviewed, and a favorable pre-screening eligibility determination will be made prior to any individual being given a final job offer and EOD. Also, each STRL will provide the written documentation needed to support a waiver decision to the appointing authority, who will document the reason for the appointment and ensure the justification is sufficient before a final offer of employment is made.

The individual will perform duties and occupy a location permitted by their current security eligibility (interim or final), but not higher than Top Secret.

The applicant may be required to sign a statement of understanding that documents that the pre-appointment decision was made based on limited information, and that continued employment depends upon the completion of a personnel security investigation (tier 3 or 5) and favorable adjudication of the full investigative results.

B. Evaluation

Procedures for evaluating these authorities will be incorporated into the STRL demonstration project evaluation processes conducted by the STRLs, OUSD(R&E), or Component headquarters, as appropriate.

C. Reports

STRLs will track and provide information and data on the use of these authorities when requested by the Component headquarters or OUSD(R&E).

III. Required Waivers to Law and Regulations

BILLING CODE 5001-06-P

Appendix A. Waivers to Title 5, U.S.C.

<u>Title 5, United States Code</u>	<u>Title 5, Code of Federal Regulations</u>
	<p>5 CFR 212.301 – Competitive Status Defined.</p> <p>Waived to the extent necessary to allow individuals on flexible-length and renewable-term appointments to be considered status candidates as defined in 82 FR 43339 and this FRN.</p>
<p>5 U.S.C. Chapter 33, Subchapter I – Examination, Certification, and Appointment.</p> <p>Waived except for sections 3302, 3321, and 3328 to the extent necessary to allow direct hire authority for qualified candidates whose positions involve 51 percent or more of time spent in direct support of STRL activities, are identified by the STRLs as hard to fill, have a history of high turnover, or require unique, laboratory-related skillsets; and to the extent necessary to allow employees appointed on flexible-length and renewable-term appointments to apply for Federal positions as status candidates.</p>	<p>5 CFR Parts 300-330 Other Than Subpart G of 300 – Employment. Waived to the extent necessary to allow direct hire authority for qualified candidates whose positions involve 51 percent or more of time spent in direct support of STRL activities, are identified by the STRLs as hard to fill, have a history of high turnover, or require unique, laboratory-related skillsets.</p>

	<p>5 CFR Part 315.805 – Termination of Probationers for Conditions Arising before Appointment. Waived to the extent necessary to permit termination during the extended probationary period without using adverse procedures with regard to the authorities in this FRN.</p>
	<p>5 CFR Part 316.301 – Purpose and Duration. Waived to the extent necessary to allow provisions of the flexible-length and renewable-term appointments described herein.</p>
	<p>5 CFR Part 330.104 – Requirements for Vacancy Announcements. Waived to the extent necessary to allow an STRL to determine information to be published in a USAJobs flyer.</p>
	<p>5 CFR Part 332 – Recruitment and Selection through Competitive Examination. Waived to the extent necessary to allow employees on flexible-length and renewable-term appointments to apply for Federal positions as status candidates.</p>

	5 CFR Part 335 – Promotion and Internal Placement. Waived to the extent necessary to allow employees on a flexible-length and renewable-term appointments to apply for Federal positions as status candidates.
5 U.S.C. 3308 – Competitive Service; Examinations; Educational Requirements Prohibited; Exceptions. Waived to the extent necessary to allow the qualification determinations as described in this FRN.	5 CFR Part 338.301 – Competitive Service Appointment. Waived to the extent necessary to allow STRLs to consider demonstrated exceptional experience or a combination of experience and education in lieu of meeting OPM individual occupational qualification requirements for S&E positions.
5 U.S.C. 5379(a)(1)(A) and (b)(2) – Student Loan Repayment. Waived to the extent necessary to define agency as STRL and to allow provisions of the student loan repayment authority as described in this FRN.	5 CFR Part 537 – Repayment of Student Loans. Waived to the extent necessary to define agency as STRL and to allow provisions of the student loan repayment authority as described in this FRN.
	5 CFR Part 1400.202 (a)(2) – Waivers and Exceptions to Pre-appointment Investigative Requirements. (1) To the extent necessary, waive the pre-employment investigative requirements thereby enabling STRLs to make a final job offer and establish an EOD

	<p>prior to a favorable eligibility determination at the Top Secret/SCI level. (2) For positions designated as Top Secret/Special-Sensitive and Critical-Sensitive, apply the same waiver requirements for pre-appointment investigations in accordance with 5 CFR 1400.202(a)(2)(ii) for Critical-Sensitive positions with the following changes:</p> <p>a. An emergency or a national interest necessitating a pre-employment investigation waiver would include an STRL's inability to meet mission requirements.</p> <p>b. An agency or agency head would be defined as an STRL to allow for the provisions regarding security eligibility as described in this FRN.</p>
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Appendix B. Authorized STRLs and Federal Register Notices

STRL	Federal Register Notice
Air Force Research Laboratory	61 FR 60400 amended by 75 FR 53076
Joint Warfare Analysis Center	85 FR 29414
Combat Capabilities Development Command Armaments Center	76 FR 3744

Army Research Institute for Behavioral and Social Sciences	Not yet published
Combat Capabilities Development Command Army Research Laboratory	63 FR 10680
Combat Capabilities Development Command Aviation and Missile Center	62 FR 34906 and 62 FR 34876 amended by 65 FR 53142 (AVRDEC and AMRDEC merged together).
Combat Capabilities Development Command Chemical Biological Center	74 FR 68936
Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center	66 FR 54872
Engineer Research and Development Center	63 FR 14580 amended by 65 FR 32135
Combat Capabilities Development Command Ground Vehicle Systems Center	76 FR 12508
Medical Research and Development Command	63 FR 10440
Combat Capabilities Development Command Soldier Center	74 FR 68448
Technical Center, U.S. Army Space and Missile Defense Command	85 FR 3339
Naval Air Warfare Center	76 FR 8530

Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center	Not yet published
Naval Medical Research Center	Not yet published
Naval Research Laboratory	64 FR 33970
Naval Sea Systems Command Warfare Centers	62 FR 64050
Office of Naval Research	75 FR 77380
Navy Information Warfare Center Atlantic and Pacific	76 FR 1924

Dated: December 1, 2020.

Kayyonne T. Marston,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. 2020-26775 Filed 12-4-20; 8:45 am]

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DEPARTMENT OF EDUCATION

[Docket No.: ED-2020-SCC-0156]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Generic Application Package for Departmental Generic Grant Programs

AGENCY: Office of the Secretary (OS),
Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the
Paperwork Reduction Act of 1995, ED is
proposing an extension of a currently
approved information collection.

DATES: Interested persons are invited to
submit comments on or before January
6, 2021.

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](http://www.reginfo.gov/public/do/PRAMain). Find this particular
information collection request by
selecting "Department of Education"
under "Currently Under Review," then

check "Only Show ICR for Public
Comment" checkbox.

FOR FURTHER INFORMATION CONTACT: For
specific questions related to collection
activities, please contact Alfreida
Pettiford, 202-245-6110.

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: Generic
Application Package for Departmental
Generic Grant Programs.

OMB Control Number: 1894-0006.

Type of Review: Extension of a
currently approved information
collection.

Respondents/Affected Public: State,
Local, and Tribal Governments.

*Total Estimated Number of Annual
Responses:* 9,861.

*Total Estimated Number of Annual
Burden Hours:* 447,089.

Abstract: The Department is
requesting an extension of the approval
for the Generic Application Package that
numerous ED discretionary grant
programs use to provide to applicants
the forms and information needed to
apply for new grants under those grant
program competitions. The Department
will use this Generic Application
package for discretionary grant
programs that: (1) Use the standard ED
or Federal-wide grant applications
forms that have been cleared separately
through OMB under the terms of this
generic clearance as approved by OMB
and (2) use selection criteria from the
Education Department General
Administrative Regulations (EDGAR);
selection criteria that reflect statutory or
regulatory provisions that have been
developed under 34 CFR 75.209, or a
combination of EDGAR, statutory or

regulatory criteria or other provisions, as authorized under 34 CFR 75.200 and 75.209. The use of the standard ED grant application forms and the use of EDGAR and/or criteria developed under §§ 75.200 and 75.209 promotes the standardization and streamlining of ED discretionary grant application packages.

Dated: December 2, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020-26850 Filed 12-4-20; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2020-SCC-0138]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Study of District and School Uses of Federal Education Funds

AGENCY: Institute of Educational Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before January 6, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting "Department of Education" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Stulich, 202-245-6468.

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: Study of District and School Uses of Federal Education Funds.

OMB Control Number: 1850-0951.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 748.

Total Estimated Number of Annual Burden Hours: 7,140.

Abstract: The Study of District and School Uses of Federal Education Funds will examine targeting and resource allocation for five major federal education programs: Part A of Titles I, II, III, and IV of the Elementary and Secondary Education Act (ESEA) and Title I, Part B of the Individuals with Disabilities Education Act (IDEA), as well as funds provided to school districts through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The study will collect, from a nationally representative sample of 400 school districts, detailed data on revenues, expenditures, and personnel for the federal programs covered in this study. In addition, the study will collect data on suballocations of those federal funds to districts and schools to examine how the distribution of funds varies in relation to program goals and student needs and will conduct telephone interviews in nine districts to explore how districts use IDEA funds in conjunction with other federal, state, and local funds to meet the needs of students with disabilities.

This package is the second of two OMB clearance requests for this study. A previous package, approved by OMB on June 24, 2020 (OMB 1850-0951)

covered the selection and recruitment of a nationally representative sample of school districts and schools and collection of certain preliminary information from states (including lists of subgrantees and suballocation amounts for each program). The current submission is to request OMB clearance for the data collection instruments for this study. We anticipate beginning collection of subgrantee lists and other preliminary information in September 2020 and launching the district- and school-level data collection in January 2021.

Dated: December 2, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020-26849 Filed 12-4-20; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[FE Docket No. 17-79-LNG]

Eagle LNG Partners Jacksonville II LLC; Application To Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on November 30, 2020, by Eagle LNG Partners Jacksonville II LLC (Eagle Maxville). Eagle Maxville seeks to amend the export term set forth in its current authorization to export liquefied natural gas (LNG) to non-free trade agreement countries, DOE/FE Order No. 4078, to a term ending on December 31, 2050. Eagle Maxville filed the Application under the Natural Gas Act (NGA) and DOE's policy statement entitled, "Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050" (Policy Statement). Protests, motions to intervene, notices of intervention, and written comments on the requested term extension are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later

than 4:30 p.m., Eastern time, December 22, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026-4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-7893; (202) 586-2627, benjamin.nussdorf@hq.doe.gov or amy.sweeney@hq.doe.gov.

Cassandra Bernstein or Edward Toyozaki, U.S. Department of Energy (GC-76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-9793; (202) 586-0126, cassandra.bernstein@hq.doe.gov or edward.toyozaki@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On September 15, 2017, in Order No. 4078, DOE/FE authorized Eagle Maxville to export domestically produced LNG in a volume equivalent to 2.8 billion cubic feet per year of natural gas, pursuant to NGA section 3(a), 15 U.S.C. 717b(a).¹ Eagle Maxville is authorized to export this LNG in approved ISO containers loaded at the Maxville Facility located near Jacksonville, Florida, to any country which presently has, or in the future develops, the capacity to import ocean-going LNG via approved ISO containers transported on ocean-going carriers, with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries)

¹ *Eagle LNG Partners Jacksonville II LLC*, DOE/FE Order No. 4078, FE Docket No. 17-79-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers Loaded at the Eagle Maxville Facility in Jacksonville, Florida, and Exported by Vessel to Free Trade Agreement and Non-Free Trade Agreement Nations (Sept. 15, 2017).

for a 20-year term. In the Application,² Eagle Maxville asks DOE to extend its current export term to a term ending on December 31, 2050, as provided in the Policy Statement.³ Additional details can be found in the Application, posted on the DOE/FE website at: <https://www.energy.gov/sites/prod/files/2020/12/f81/Eagle%20LNG%20Partners%20Jacksonville%20II%20Maxville%20Application%20to%20Extend.pdf>.

DOE/FE Evaluation

In the Policy Statement, DOE adopted a term through December 31, 2050 (inclusive of any make-up period), as the standard export term for long-term non-FTA authorizations.⁴ As the basis for its decision, DOE considered its obligations under NGA section 3(a), the public comments supporting and opposing the proposed Policy Statement, and a wide range of information bearing on the public interest.⁵ DOE explained that, upon receipt of an application under the Policy Statement, it would conduct a public interest analysis of the application under NGA section 3(a). DOE further stated that “the public interest analysis will be limited to the application for the term extension—meaning an intervenor or protestor may challenge the requested extension but not the existing non-FTA order.”⁶

Accordingly, in reviewing Eagle Maxville’s Application, DOE/FE will consider any issues required by law or policy under NGA section 3(a), as informed by the Policy Statement. To the extent appropriate, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (2018 LNG Export Study)*,⁷ DOE’s response to public comments received on that Study,⁸ and the following environmental documents:

² *Eagle LNG Partners Jacksonville II LLC*, Application to Amend Export Term for Existing Long-Term Export Authorizations Through December 31, 2050, FE Docket No. 17-79-LNG (Nov. 30, 2020). Eagle Maxville’s request regarding its FTA authorization is not subject to this Notice. See 15 U.S.C. 717b(c).

³ U.S. Dep’t. of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy Statement and Response to Comments, 85 FR 52237 (Aug. 25, 2020) [hereinafter Policy Statement].

⁴ See *id.*, 85 FR 52247.

⁵ See *id.*, 85 FR 52247.

⁶ *Id.*, 85 FR 52247.

⁷ See NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018)*, available at: <https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf>.

⁸ U.S. Dep’t. of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments

• *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States*, 79 FR 48132 (Aug. 15, 2014);⁹

• *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States*, 79 FR 32260 (June 4, 2014);¹⁰ and

• *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update*, 84 FR 49278 (Sept. 19, 2019), and DOE/FE’s response to public comments received on that study.¹¹ Parties that may oppose the Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Application. Interested parties will be provided 15 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. The public previously was given an opportunity to intervene in, protest, and comment on Eagle Maxville’s long-term non-FTA application. Therefore, DOE will not consider comments or protests that do not bear directly on the requested term extension.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be

Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

⁹ The Addendum and related documents are available at: <http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states>.

¹⁰ The 2014 Life Cycle Greenhouse Gas Report is available at: <http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states>.

¹¹ U.S. Dep’t of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: <https://fossil.energy.gov/app/docketindex/docket/index/21>.

considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) emailing the filing to fergas@hq.doe.gov, with FE Docket No. 17–79–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 17–79–LNG. *Please Note:* If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE web address: <https://www.energy.gov/fe/services/natural-gas-regulation>.

Signed in Washington, DC, on December 1, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy.

[FR Doc. 2020–26780 Filed 12–4–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 16–15–LNG]

Eagle LNG Partners Jacksonville LLC; Application To Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on November 30, 2020, by Eagle LNG Partners Jacksonville LLC (Eagle LNG). Eagle LNG seeks to amend the export term set forth in its current authorization to export liquefied natural gas (LNG) to non-free trade agreement countries, DOE/FE Order No. 4445, to a term ending on December 31, 2050. Eagle LNG filed the Application under the Natural Gas Act (NGA) and DOE's policy statement entitled, "Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050" (Policy Statement). Protests, motions to intervene, notices of intervention, and written comments on the requested term extension are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, December 22, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627, benjamin.nussdorf@hq.doe.gov or amy.sweeney@hq.doe.gov.

Cassandra Bernstein or Edward Toyozaki, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–0126, cassandra.bernstein@hq.doe.gov or edward.toyozaki@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On

October 3, 2019, in Order No. 4445, DOE/FE authorized Eagle LNG to export domestically produced LNG in a volume equivalent to 49.8 billion cubic feet per year of natural gas, pursuant to NGA section 3(a), 15 U.S.C. 717b(a).¹ Eagle LNG is authorized to export this LNG by vessel and in ISO containers on vessels from the proposed Jacksonville Project, to be located in Jacksonville, Florida, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries) for a 20-year term. In the Application,² Eagle LNG asks DOE to extend its current export term to a term ending on December 31, 2050, as provided in the Policy Statement.³ Additional details can be found in the Application, posted on the DOE/FE website at: <https://www.energy.gov/sites/prod/files/2020/12/f81/Eagle%20LNG%20Partners%20Application%20to%20Extend.pdf>.

DOE/FE Evaluation

In the Policy Statement, DOE adopted a term through December 31, 2050 (inclusive of any make-up period), as

¹ *Eagle LNG Partners Jacksonville LLC*, DOE/FE Order No. 4445, FE Docket No. 16–15–LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Oct. 3, 2019).

² *Eagle LNG Partners Jacksonville LLC*, Application to Amend Export Term for Existing Long-Term Export Authorizations Through December 31, 2050, FE Docket No. 16–15–LNG (Nov. 30, 2020). Eagle LNG's request regarding its FTA authorization is not subject to this Notice. See 15 U.S.C. 717b(c).

³ U.S. Dep't of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy Statement and Response to Comments, 85 FR 52237 (Aug. 25, 2020) [hereinafter Policy Statement].

the standard export term for long-term non-FTA authorizations.⁴ As the basis for its decision, DOE considered its obligations under NGA section 3(a), the public comments supporting and opposing the proposed Policy Statement, and a wide range of information bearing on the public interest.⁵ DOE explained that, upon receipt of an application under the Policy Statement, it would conduct a public interest analysis of the application under NGA section 3(a). DOE further stated that “the public interest analysis will be limited to the application for the term extension—meaning an intervenor or protestor may challenge the requested extension but not the existing non-FTA order.”⁶

Accordingly, in reviewing Eagle LNG’s Application, DOE/FE will consider any issues required by law or policy under NGA section 3(a), as informed by the Policy Statement. To the extent appropriate, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (2018 LNG Export Study)*,⁷ DOE’s response to public comments received on that Study,⁸ and the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States*, 79 FR 48132 (Aug. 15, 2014);⁹
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States*, 79 FR 32260 (June 4, 2014);¹⁰ and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update*, 84 FR 49278 (Sept. 19, 2019), and DOE/FE’s response to public comments received on that study.¹¹

⁴ See *id.*, 85 FR 52247.

⁵ See *id.*, 85 FR 52247.

⁶ *Id.*, 85 FR 52247.

⁷ See NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (June 7, 2018), available at: <https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf>.

⁸ U.S. Dep’t of Energy, *Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments*, 83 FR 67251 (Dec. 28, 2018).

⁹ The Addendum and related documents are available at: <http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states>.

¹⁰ The 2014 Life Cycle Greenhouse Gas Report is available at: <http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states>.

¹¹ U.S. Dep’t of Energy, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments*, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at:

Parties that may oppose the Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Application. Interested parties will be provided 15 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. The public previously was given an opportunity to intervene in, protest, and comment on Eagle LNG’s long-term non-FTA application. Therefore, DOE will not consider comments or protests that do not bear directly on the requested term extension.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to fergas@hq.doe.gov, with FE Docket No. 16–15–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 16–15–LNG. *Please Note:* If submitting a filing via email, please include all related documents and attachments (*e.g.*, exhibits) in the original email correspondence. Please do not include

<https://fossil.energy.gov/app/docketindex/docket/index/21>.

any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties’ written comments and replies thereto. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE web address: <https://www.energy.gov/fe/services/natural-gas-regulation>.

Signed in Washington, DC, on December 1, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy.

[FR Doc. 2020–26779 Filed 12–4–20; 8:45 am]

BILLING CODE 6450–01–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: EC21–30–000.

Applicants: U.S. Energy Partners, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of U.S. Energy Partners LLC.

Filed Date: 11/30/20.

Accession Number: 20201130–5329.

Comments Due: 5 p.m. ET 12/21/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–2462–002; ER11–4111–002; ER18–2264–005; ER19–289–005.

Applicants: Macquarie Energy LLC, Macquarie Energy Trading LLC, Cleco Cajun LLC, Hudson Ranch Power I LLC.

Description: Notice of Non-Material Change in Status of Macquarie Energy LLC, et al.

Filed Date: 11/30/20.

Accession Number: 20201130–5338.

Comments Due: 5 p.m. ET 12/21/20.

Docket Numbers: ER20–659–001.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance filing to set effective date for Fast Start Pricing to be effective 12/15/2020.

Filed Date: 12/1/20.

Accession Number: 20201201–5245.

Comments Due: 5 p.m. ET 12/22/20.

Docket Numbers: ER20–1608–001.

Applicants: Mountain Breeze Wind, LLC.

Description: Notice of Non-Material Change in Status of Mountain Breeze Wind, LLC.

Filed Date: 11/30/20.

Accession Number: 20201130–5336.

Comments Due: 5 p.m. ET 12/21/20.

Docket Numbers: ER20–1806–002.

Applicants: Catalyst Old River Hydroelectric Limited Partnership.

Description: Notice of Non-Material Change in Status of Catalyst Old River Hydroelectric Limited Partnership.

Filed Date: 12/1/20.

Accession Number: 20201201–5080.

Comments Due: 5 p.m. ET 12/22/20.

Docket Numbers: ER20–2316–001.

Applicants: Hillcrest Solar I, LLC.

Description: Notice of Non-Material Change in Status of Hillcrest Solar I, LLC.

Filed Date: 11/30/20.

Accession Number: 20201130–5339.

Comments Due: 5 p.m. ET 12/21/20.

Docket Numbers: ER20–2696–000.

Applicants: VESI Pomona Energy Storage, Inc.

Description: Second Supplement to August 19, 2020 VESI Pomona Energy Storage Inc. tariff filing.

Filed Date: 11/30/20.

Accession Number: 20201130–5256.

Comments Due: 5 p.m. ET 12/21/20.

Docket Numbers: ER21–515–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Pseudo Tie Agreement with TEP, Rate Schedule No. 175 to be effective 12/1/2020.

Filed Date: 11/30/20.

Accession Number: 20201130–5229.

Comments Due: 5 p.m. ET 12/21/20.

Docket Numbers: ER21–516–000.

Applicants: Avista Corporation.

Description: § 205(d) Rate Filing: Avista Corp RS T1111–1 Amended Grant County Agreement to be effective 12/1/2020.

Filed Date: 11/30/20.

Accession Number: 20201130–5230.

Comments Due: 5 p.m. ET 12/21/20.

Docket Numbers: ER21–517–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Tri-State's Proposed OATT Revisions for WEIS Market Implementation to be effective 2/1/2021.

Filed Date: 11/30/20.

Accession Number: 20201130–5240.

Comments Due: 5 p.m. ET 12/21/20.

Docket Numbers: ER21–518–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: § 205(d) Rate Filing: WEIS Implementation Filing to be effective 2/1/2021.

Filed Date: 11/30/20.

Accession Number: 20201130–5241.

Comments Due: 5 p.m. ET 12/21/20.

Docket Numbers: ER21–518–001.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Tariff Amendment: Correction to WEIS Implementation Filing to be effective 2/1/2021.

Filed Date: 12/1/20.

Accession Number: 20201201–5007.

Comments Due: 5 p.m. ET 12/22/20.

Docket Numbers: ER21–519–000.

Applicants: Basin Electric Power Cooperative.

Description: § 205(d) Rate Filing: Basin Electric Proposed OATT Revisions for WEIS Market Implementation to be effective 2/1/2021.

Filed Date: 11/30/20.

Accession Number: 20201130–5242.

Comments Due: 5 p.m. ET 12/21/20.

Docket Numbers: ER21–520–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Financial Transmission Rights Default Disposition Tariff and OA Revisions to be effective 2/1/2021.

Filed Date: 11/30/20.

Accession Number: 20201130–5286.

Comments Due: 5 p.m. ET 12/21/20.

Docket Numbers: ER21–521–000.

Applicants: Richmond Spider Solar, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 12/2/2020.

Filed Date: 12/1/20.

Accession Number: 20201201–5008.

Comments Due: 5 p.m. ET 12/22/20.

Docket Numbers: ER21–522–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2198R28 Kansas Power Pool NITSA NOA to be effective 2/21/2021.

Filed Date: 12/1/20.

Accession Number: 20201201–5074.

Comments Due: 5 p.m. ET 12/22/20.

Docket Numbers: ER21–523–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 4765; Queue No. AB1–123 to be effective 8/7/2017.

Filed Date: 12/1/20.

Accession Number: 20201201–5079.

Comments Due: 5 p.m. ET 12/22/20.

Docket Numbers: ER21–524–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule Nos. 303 and 304—PNM Pseudo-Tie Agreements to be effective 2/1/2021.

Filed Date: 12/1/20.

Accession Number: 20201201–5101.

Comments Due: 5 p.m. ET 12/22/20.

Docket Numbers: ER21–525–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–12–01_GIA Termination Loophole Filing to be effective 2/1/2021.

Filed Date: 12/1/20.

Accession Number: 20201201–5154.

Comments Due: 5 p.m. ET 12/22/20.

Docket Numbers: ER21–526–000.

Applicants: San Diego Gas & Electric Company.

Description: Third Annual Informational Filing [Cycle 3] of Fifth Transmission Owner Rate Formula rate mechanism of San Diego Gas & Electric Company.

Filed Date: 12/1/20.

Accession Number: 20201201–5184.

Comments Due: 5 p.m. ET 12/22/20.

Docket Numbers: ER21–527–000.

Applicants: Birchwood Power Partners, L.P.

Description: Tariff Cancellation: Cancellation reactive rates to be effective 3/1/2021.

Filed Date: 12/1/20.

Accession Number: 20201201–5276.

Comments Due: 5 p.m. ET 12/22/20.

Docket Numbers: ER21–528–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Tariff Clean-Up Filing Effective 20210101 to be effective 1/1/2021.

Filed Date: 12/1/20.

Accession Number: 20201201–5293.
Comments Due: 5 p.m. ET 12/22/20.

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: December 1, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020–26826 Filed 12–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–58–004]

PJM Interconnection, LLC; Notice of Filing

Take notice that on November 24, 2020, PJM Interconnection, L.L.C. submitted a filing in compliance with the Federal Energy Regulatory Commission's (Commission) November 12, 2020 Order on Compliance,¹ in the above captioned proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

¹ *PJM Interconnection, L.L.C.*, 173 FERC 61,134 (2020) (November 12 Order).

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 15, 2020.

Dated: December 1, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020–26827 Filed 12–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP19–57–003.

Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing AGT New York Delivery Surcharge 2020 Filing to be effective 1/1/2021.

Filed Date: 11/30/20.

Accession Number: 20201130–5215.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP20–908–002.

Applicants: Alliance Pipeline L.P.
Description: Compliance filing Motion to Place Suspended Revised Tariff Sheets into Effect to be effective 12/1/2020.

Filed Date: 11/30/20.

Accession Number: 20201130–5247.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–224–000.

Applicants: Trunkline Gas Company, LLC.

Description: eTariff filing per Withdrawal of Filing to be effective N/A.

Filed Date: 11/30/20.

Accession Number: 20201130–5205.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–259–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various 12–1–2020 Releases to be effective 12/1/2020.

Filed Date: 11/30/20.

Accession Number: 20201130–5094.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–260–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Dec 2020 to be effective 12/1/2020.

Filed Date: 11/30/20.

Accession Number: 20201130–5096.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–261–000.

Applicants: Enable Mississippi River Transmission, LLC.

Description: § 4(d) Rate Filing: MRT Filing to Correct Tariff Record to be effective 12/1/2020.

Filed Date: 11/30/20.

Accession Number: 20201130–5115.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–262–000.

Applicants: Tennessee Gas Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Volume No. 2—BP Energy Company SP336421 to be effective 1/1/2021.

Filed Date: 11/30/20.

Accession Number: 20201130–5128.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–263–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20201130 Negotiated Rates to be effective 12/1/2020.

Filed Date: 11/30/20.

Accession Number: 20201130–5148.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–264–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: AGT Negotiated Rates—Various Releases eff 12–1–2020 to be effective 12/1/2020.

Filed Date: 11/30/20.

Accession Number: 20201130–5212.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–265–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20201112 Carlton and DDVC Tariff Changes to be effective 1/1/2021.

Filed Date: 11/30/20.

Accession Number: 20201130–5218.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–266–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: TCO SWN & CNX NC Neg Rate Agreement to be effective 1/1/2021.

Filed Date: 11/30/20.

Accession Number: 20201130–5224.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–267–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2020–11–30 Negotiated Rate Agreements to be effective 12/1/2020.

Filed Date: 11/30/20.

Accession Number: 20201130–5248.

Comments Due: 5 p.m. ET 12/14/20.

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: December 1, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020–26822 Filed 12–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–17–000]

Harts Mill Solar, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 1, 2020, the Commission issued an order in Docket No. EL21–17–000, pursuant to section 206 of the Federal Power Act (FPA), 16

U.S.C. 824e, instituting an investigation into whether Harts Mill Solar, LLC's proposed Rate Schedule may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. *Harts Mill Solar, LLC*, 173 FERC 61,194 (2020).

The refund effective date in Docket No. Docket No. EL21–17–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL21–17–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2020), within 21 days of the date of issuance of the order.

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 FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFile link at <http://www.ferc.gov>. 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.

Dated: December 1, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020–26820 Filed 12–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–5–000]

Commission Information Collection Activities (FERC–725HH); Comment Request; Revision and Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–725HH (RF Reliability Standards).

DATES: Comments on the collection of information are due February 5, 2021.

ADDRESSES: You may submit comments (identified by Docket No. IC21–5–000) by any of the following methods:

- *eFiling at Commission's Website:* <http://www.ferc.gov/docs-filing/efiling.asp>
- *U.S. Postal Service Mail:* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.
- Effective July 1, 2020, delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov>. For user assistance, contact FERC Online Support by email at: ferconlinesupport@ferc.gov, or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at: <http://www.ferc.gov/docs-filing/docs-filing.asp>.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at DataClearance@FERC.gov, telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725HH, RF Reliability Standards.

OMB Control No.: 1902–0256.

Type of Request: Three-year renewal of FERC–725HH.

Abstract: This collection of information pertains to the

Commission's compliance with section 215 of the Federal Power Act (FPA) (16 U.S.C. 824o), which enables the Commission to strengthen the reliability of the bulk-power system.¹ The Commission's implementation of FPA section 215 involves review and approval of a system of mandatory Reliability Standards that are established and enforced by an Electric Reliability Organization (ERO).² The Commission has certified the North American Electric Reliability Corporation (NERC) as the ERO.³

Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are

proposed to the ERO by a Regional Entity.⁴ A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO.⁵ On March 17, 2011, the Commission approved a regional Reliability Standard submitted by the ERO that was developed by the ReliabilityFirst Corporation (RF).⁶

RF promotes bulk electric system reliability in the Eastern Interconnection. RF is the Regional Entity responsible for compliance monitoring and enforcement in the RF region. In addition, RF provides an environment for the development of

Reliability Standards and the coordination of the operating and planning activities of its members as set forth in the RF bylaws.

There is one regional Reliability Standard in the RF region. The Commission requests renewal of OMB clearance for that regional Reliability Standard, known as BAL-502-RF-03 (Planning Resource Adequacy Analysis, Assessment and Documentation).

Type of Respondents: Planning coordinators.

*Estimate of Annual Burden*⁷: The estimated burden and cost⁸ are as follows:

FERC-725HH, RF RELIABILITY STANDARDS

Entity	Number of respondents ⁹	Annual number of responses per respondent	Annual number of responses	Average burden hours and cost per response (\$)	Total annual burden hours and total annual cost (\$)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
Proposed Regional Reliability Standard BAL-502-RF-03						
Planning Coordinators	2	1	2	16 hrs.; \$1,243.52	32 hrs.; \$2487.04	\$1,243.52

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 1, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-26823 Filed 12-4-20; 8:45 am]

BILLING CODE 6717-01-P

¹ FPA section 251(a)(1) defines bulk-power system as follows: (A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

² FPA section 215(a)(2) defines "Electric Reliability Organization" as "the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review."

³ *North American Electric Reliability Corp.*, 116 FERC 61,062 (ERO Certification Order), *order on reh'g & compliance*, 117 FERC 61,126 (2006), *aff'd*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2879-012]

Green Mountain Power Corporation; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

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.:* 2879-012.
- c. *Date Filed:* January 30, 2020.

sub nom. Alcoa, Inc. v. FERC, 564 F.3d 1342 (DC Cir. 2009).

⁴ 16 U.S.C. 824o(e)(4).

⁵ 16 U.S.C. 824o(a)(7) and (e)(4).

⁶ *Planning Resource Adequacy Assessment Reliability Standard*, Order No. 747, 134 FERC 61,212 (2011).

⁷ Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

⁸ For BAL-502-RF-03, the hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics for three positions involved in the reporting and recordkeeping requirements. These

d. *Applicant:* Green Mountain Power Corporation (GMP).

e. *Name of Project:* Bolton Falls Hydroelectric Project.

f. *Location:* The existing project is located on the Winooski River in Washington County, Vermont. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. John Greenan, P.E., Engineer, Green Mountain Power Corporation, 1252 Post Road, Rutland, Vermont 05701; phone: (802) 770-2195 or email at John.Greenan@greenmountainpower.com.

i. *FERC Contact:* Michael Tust at (202) 502-6522; or email at michael.tust@ferc.gov.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary*

figures include salary (https://www.bls.gov/oes/current/oes_nat.htm) and benefits (<http://www.bls.gov/news.release/ecec.nr0.htm>) and are:

- Manager (Occupation Code 11-0000): \$94.84/hour
- Engineer (Occupation Code 17-2071): \$85.71/hour
- File Clerk (Occupation Code 43-4071): \$52.60/hour

The hourly cost for the reporting requirements (\$77.72) is an average of the cost of a manager, an engineer, and a file clerk.

⁹ The number of respondents is derived from the NERC Compliance Registry as of October 2, 2020 for the burden associated with the proposed regional Reliability Standard BAL-502-RF-03.

prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCOOnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on July 15, 2020, revising the regulations under 40 CFR parts 1500-1518 that federal agencies use to implement NEPA (see Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43,304). The Final Rule became effective on and applies to any NEPA process begun after September 14, 2020. An agency may also apply the regulations to ongoing activities and environmental documents begun before September 14, 2020, which includes the proposed Bolton Falls Project relicensing. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

1. *The Bolton Falls Project consists of the following constructed facilities:* (1) A 92-foot-high, 275-foot-wide timber crib dam with a 5-foot-high rubber dam atop the timber crib construction with a maximum crest elevation of 397 feet and a 196-foot-long reinforced concrete spillway cap at a crest elevation of 392 feet; (2) a 59-acre impoundment with a total storage capacity of 300 acre-feet at a normal operating elevation of 397 feet; (3) a forebay with two concrete intakes, each with a 3-inch-spaced trashrack; (4) two 10-foot diameter, 120-foot-long steel penstocks; (5) a 73-foot-long, 57-foot-wide powerhouse containing two horizontal, 3,750-kilowatt Kaplan turbines with a total installed capacity of 7,500 kilowatts; (6) a 36-inch diameter steel bypass pipe with an invert elevation of 383 feet that discharges near the left side of the spillway base; (7) an approximately 130-foot long, 5-kilovolt underground transmission line connecting to an adjacent switchyard; (8) a 600-foot-long, 34.5-kilovolt overhead transmission line connecting to a second switchyard; and (9) appurtenant facilities. GMP also maintains day-use recreation facilities at the project, including a picnic area, trails, fishing access, and a canoe launch and portage trail.

GMP proposes to operate in automated run-of-river mode as it does under its current practice but instead of providing a 300-cubic feet per second (cfs) minimum flow into the Winooski River through the powerhouse (when generating) or via spill over the dam (when not generating) as it does now, GMP proposes to provide a seasonal aesthetic spill flow of 75 cfs or inflow, whichever is less, into the bypassed reach via spillage over the dam during daylight hours from April 1 through December 15. At all other times, bypassed reach flows would be reduced to leakage except when inflow drops below the minimum hydraulic capacity (*i.e.*, 365 cfs) or when inflow exceeds the maximum hydraulic capacity (2,400 cfs) of the generating units in which case additional flows would be released to the bypassed reach via spill over the dam. Under normal flow conditions when aesthetic spillage is required, GMP proposes to maintain the impoundment at an elevation of 397.25 feet. When aesthetic spillage over the dam is not required, GMP proposes to maintain the reservoir at an elevation of 397 feet as it does now. GMP also proposes to: (1) Relocate recreation parking area out of the floodplain; (2) implement measures to protect creeping lovegrass at the day-use area; (3) add two picnic tables and an information

kiosk to the day-use area; and (4) improve the portage landing, trail, and signage.

m. A copy of the application can 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. For assistance, contact FERC Online Support.

Register online at <https://ferconline.ferc.gov/FERCOOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title PROTEST, MOTION TO INTERVENE, COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, PRELIMINARY TERMS AND CONDITIONS, or PRELIMINARY FISHWAY PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Final amendments to the application must be filed with the Commission no later than thirty (30) days from the issuance date of this notice.

p. The applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must be sent to the certifying authority and to the Commission concurrently.

q. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions.	January 2021.
Deadline for Filing Reply Comments.	March 2021.

Dated: December 1, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-26821 Filed 12-4-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20-527-000]

Columbia Gulf Transmission, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the East Lateral Xpress Project

On September 24, 2020, Columbia Gulf Transmission, LLC (Columbia Gulf) filed an application in Docket No. CP20-527-000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities in Louisiana. The proposed project is known as the East Lateral Xpress Project (Project), and would provide a total of 725 million standard cubic feet per day of firm transportation capacity, on Columbia Gulf's interstate natural gas pipeline system, to supply feed gas for Venture Global LNG's Plaquemines LNG facility in Plaquemines Parish, Louisiana.

On October 8, 2020, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the

requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.¹

Schedule for Environmental Review

Issuance of EA March 16, 2021
90-day Federal Authorization Decision
Deadline June 14, 2021

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The East Lateral Xpress Project would consist of the following facilities:

- 8.1 miles of 30-inch-diameter pipeline lateral within Barataria Bay in Jefferson and Plaquemines Parishes, Louisiana;
- a new 23,470-horsepower compressor station at an existing Columbia Gulf abandoned compressor station site in St. Mary Parish, Louisiana (Centerville Compressor Station);
- a new 23,470-horsepower compressor station adjacent to an existing tie-in facility in Lafourche Parish, Louisiana (Golden Meadow Compressor Station);
- one new delivery meter station;
- one new tie-in facility in Barataria Bay; and
- two new mainline valves.

Background

On October 21, 2020, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed East Lateral Xpress Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments from the National Oceanic and Atmospheric Administration National Marine Fisheries Service, the U.S. Environmental Protection Agency, and the Teamsters National Pipeline Labor Management Cooperation Trust. The primary issues raised by the

commenters are essential fish habitat; air quality; environmental justice populations; and tribal impacts. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Additional information about the Project is available from the Commission's

Office of External Affairs at (866) 208-FERC or on the FERC website (www.ferc.gov). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number (*i.e.*, CP20-527), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 1, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-26825 Filed 12-4-20; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0750; FRL-10017-13]

Pesticide Registration Review; Proposed Interim Decision for Chlorpyrifos; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decision for chlorpyrifos and opens a 60-day public comment period on the proposed interim decision, revised draft human health risk assessment and ecological risk assessment for chlorpyrifos.

DATES: Comments must be received on or before February 5, 2021.

ADDRESSES: Submit your comments, identified by the docket identification

¹40 CFR 1501.10 (2020)

(ID) number for chlorpyrifos by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room are closed to public visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The contact identified in the Table in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: biscoe.melanie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a

wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the contact identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. Background

Registration review is EPA’s periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without

unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide’s registration is based on current scientific and other knowledge, including its effects on human health and the environment. As part of the registration review process, the Agency has completed a proposed interim decision for chlorpyrifos.

III. Authority

EPA is conducting its registration review of the chemical listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for registration review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA’s proposed interim registration review decision for chlorpyrifos and opens a 60-day public comment period on the proposed interim registration review decision, revised draft human health risk assessment, and ecological risk assessment.

TABLE 1—PROPOSED INTERIM DECISION

Registration review case name and No.	Docket ID No.	Contact information
Chlorpyrifos, Case 0100	EPA–HQ–OPP–2008–0850	OPPChlorpyrifosInquiries@epa.gov . (703) 347–0206.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA’s rationales for conducting additional risk assessments for the

registration review of the pesticide included in the Table in Unit IV, as well as the Agency’s subsequent risk findings. The proposed interim registration review decision is supported by the rationales included in the risk assessments.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review

decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision and risk assessments. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticide included in the

Table in Unit IV. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a “Response to Comments Memorandum” in the docket. The interim registration review decision will explain the effect that any comments had on the interim registration review decision and risk assessments and provide the Agency’s response to significant comments.

Background on the registration review program is provided at: <http://www.epa.gov/pesticide-reevaluation>.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: November 19, 2020.

Mary Reaves,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2020–26386 Filed 12–4–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0052; FRL–10017–72]

Pesticide Product Registration; Receipt of Applications for New Uses (November 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register a new use for a pesticide product containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before January 6, 2021.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol of the EPA registration number of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets/about-epa-dockets>.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Marietta Echeverria, Registration Division (7505P), main telephone number: (703) 305–7090, email address: RDfRNotices@epa.gov. The mailing address is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person’s name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that

is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipts—New Uses

EPA Registration Numbers: 87895–2 and 87895–4. *Docket ID number:* EPA–HQ–OPP–2020–0600. *Applicant:* AgLogic Chemical, LLC., 121 S Estes Dr. Ste. 101, Chapel Hill, NC 27514. *Active ingredient:* Aldicarb. *Product type:* Insecticide. *Proposed uses:* Oranges and grapefruit in Florida and Texas. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 20, 2020.

Hamaad Syed,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–26810 Filed 12–4–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10017–53–OA]

Meetings of the Local Government Advisory Committee (LGAC) and the Small Communities Advisory Subcommittee (SCAS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee (LGAC) and the Small Communities Advisory Subcommittee (SCAS) will conduct a virtual meeting. Due to unforeseen circumstances with scheduling key

officials, EPA is announcing this meeting with less than 15 calendar days' notice. Notice has previously been posted to EPA's website.

DATES: The virtual meeting will be held on Wednesday, December 9, 2020 from 2:30–6:00 p.m. EDT.

ADDRESSES: The meetings will be held virtually through an online audio and video platform. Members of the public who wish to participate should register through the LGAC website at <https://www.epa.gov/ocir/local-government-advisory-committee-lgac> or by contacting the Designated Federal Officer (DFO) at the number or email below. The agenda and other meeting materials, including the meeting summaries, will be available online at <https://www.epa.gov/ocir/local-government-advisory-committee-lgac> and can be obtained by written request to the DFO. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

FOR FURTHER INFORMATION CONTACT: LGAC and SCAS contact is Victoria Ludwig, Acting Designated Federal Officer, at (202) 343–9291, (202) 564–3115, or email at ludwig.victoria@epa.gov.

Information on Accessibility: For information on access or services for individuals requiring accessibility accommodations, please contact Victoria Ludwig at (202) 343–9291, (202) 564–3115, or email at ludwig.victoria@epa.gov. To request accommodation, please do so five (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION: The focus of the Committee and Subcommittee meetings will be to: (1) Deliberate and vote on recommendations from the LGAC and SCAS to EPA on ethylene oxide risk communication, EPA Office of Air and Radiation's 2022–2023 National Program Guidances, 2020 Financial Capability Assessment for the Clean Water Act, food waste management, and community-based approaches to environmental protection; (2) determine the Committee's and Subcommittee's agendas and priorities for 2021; and (3) discuss administrative matters. These are open meetings, and all interested persons are invited to participate. The LGAC and SCAS will hear comments from the public from 4:25–4:40 p.m. (EDT). Individuals or organizations wishing to address the Committee or Subcommittee will be allowed a maximum of five (5) minutes to present their point of view. Also, written comments should be submitted

electronically to ludwig.victoria@epa.gov for the LGAC and SCAS. Please contact the DFO at the numbers or email listed in **FOR FURTHER INFORMATION CONTACT** to schedule a time on the agenda. Time will be allotted on a first-come first-served basis, and the total period for comments may be extended if the number of requests for appearances requires it.

Dated: December 1, 2020.

Julian E. Bowles,

Director, State and Local Relations, EPA's Office of Congressional and Intergovernmental Relations.

[FR Doc. 2020–26800 Filed 12–4–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND DATE: Thursday, December 17, 2020 at 9:30 a.m.

PLACE: The meeting will be held via teleconference.

STATUS: The meeting will be open to public observation by teleconference only.

MATTERS TO BE CONSIDERED: Proposal to Consider Changes to Content Policy with Respect to the Program on China and Transformational Exports.

CONTACT PERSON FOR MORE INFORMATION: Joyce B. Stone (202–257–4086). Members of the public who wish to attend the meeting via audio only teleconference should register via <https://attendee.gotowebinar.com/register/3683174148646534924> by noon Wednesday, December 16, 2020. Individuals will be directed to a Webinar registration page and provided call-in information.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–26927 Filed 12–3–20; 11:15 am]

BILLING CODE 6690–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0300; Docket No. 2020–0001; Sequence No. 9]

Submission for OMB Review; General Services Administration Acquisition Regulation; Implementation of Information Technology Security Provision

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding Implementation of Information Technology Security Provision.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain.

Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Johnnie McDowell, Program Analyst, Office of Acquisition Policy, at (202) 718–6112, or gsarpolicy@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA's Office of the Chief Information Officer (OCIO) issued “CIO IT Security Procedural Guide 09–48, *GSA IT Security Procedural Guide: Security and Privacy Acquisition Requirements*,” to provide IT security standards, policies and reporting requirements. The GSA OCIO also issued “CIO 12–2018, *GSA IT Policy Requirements Guide*” requiring contracting officers and the contracting officer's representatives to coordinate with GSA Information Technology approving officials or their delegate for review of contractor submissions which may impact GSA's internal information systems. These streamlined policies into two centralized policies will reduce contractors' time to comply with GSA's IT policies and increase the security of GSA's internal information systems. These policies include the requirement for contractors to submit an IT Security Plan to the contracting officer and contracting officer's representative that describes the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under the contract. The clause will also require that contractors submit written proof of IT security authorization six months after contract award, and verify that the IT Security Plan remains valid annually.

B. Annual Reporting Burden

Respondents: 91.
Responses Per Respondent: 2.
Total Annual Responses: 182.
Hours per Response: 5.
Total Burden Hours: 910.

C. Public Comments

A 60-day notice published in the **Federal Register** at 85 FR 55678 on September 9, 2020. There were no comments.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202-501-4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control No. 3090-0300, Implementation of Information Technology Security Provision, in all correspondence.

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020-26817 Filed 12-4-20; 8:45 am]

BILLING CODE 6820-61-P

GENERAL SERVICES ADMINISTRATION

[Notice—MA—2020—09; Docket No. 2020-0002; Sequence No. 25]

Notice of GSA Bulletin FMR B-51 and Supersession of GSA Bulletin FMR B-27

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of GSA Bulletin FMR B-51, Annual Executive Agency Reports on Exchange/Sale and Personal Property Furnished to Non-Federal Recipients, Supersession and Cancellation of GSA Bulletin FMR B-27.

SUMMARY: GSA is updating guidance on the Non-Federal Recipients Report and Exchange/Sale Report. This bulletin supersedes and cancels GSA Bulletin FMR B-27, “Annual Executive Agency Reports on Excess and Exchange/Sale Personal Property,” issued on July 22, 2010, as this bulletin provides updated information on the same topic. See the **SUPPLEMENTARY INFORMATION** section below for additional information.

DATES: *Applicability Date:* December 7, 2020.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. William Garrett, Director, Personal Property Policy, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202-368-8163, or by email at

william.garrett@gsa.gov. Please cite Notice of GSA Bulletin FMR B-51.

SUPPLEMENTARY INFORMATION:**Background**

GSA has Governmentwide oversight and management responsibilities for the Exchange/Sale and Non-Federal Recipient Reports. GSA’s responsibilities include issuing appropriate regulations and monitoring agency adherence to the regulations through these reports.

On December 20, 2019, GAO publicly released its report GAO-20-101, “FEDERAL PROPERTY: Improved Monitoring, Oversight, and Data Would Help Understand Effects of Providing Property to Non-Federal Recipients.” The report recommended that “the GSA Administrator should direct the Office of Government-wide Policy to document in what circumstances excess property loaned to non-federal recipients should be reported and what property GSA is reporting on behalf of agencies, for example, by updating GSA guidance.” To address this recommendation, this bulletin is being issued to clarify the requirements to annually submit to GSA a report on personal property furnished within the United States to non-Federal recipients and a report on property exchanged or sold for replacement purposes. This bulletin also provides updated guidance on reporting loans to non-Federal recipients and clarifies what property GSA is reporting on behalf of agencies. This Bulletin supersedes and cancels GSA Bulletin FMR B-27. GSA Bulletin FMR B-51 is available at www.gsa.gov/reference/gsa-bulletins.

Authority: 40 U.S.C. 503 and 529.

Jessica Salmoiraghi,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2020-26633 Filed 12-4-20; 8:45 am]

BILLING CODE 6820-14-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-10265, CMS-10171 and CMS-P-0015A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency’s functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by January 6, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS’ website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.
2. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C.

3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Mandatory Insurer Reporting Requirements of Section 111 of the Medicare, Medicaid and SCHIP Act of 2007; *Use:* The Centers for Medicare & Medicaid Services (CMS) collects various data elements from the applicable reporting entities (see supporting documents) for purposes of carrying out the mandatory MSP reporting requirements of Section 111 of the Medicare, Medicaid and SCHIP Extension Act. This information is used to ensure that Medicare makes payment in the proper order and/or takes necessary recovery actions. 42 U.S.C. 1395y(b)(7)(A)(i)(II) was updated by the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act. Section 4002 of the SUPPORT Act also applies to Section 111 that requires Group Health Plan (GHP) reporting of primary prescription drug coverage.

MSP is generally divided into “pre-payment” and “post-payment” activities. Pre-payment activities are generally designed to stop mistaken primary payments in situations where Medicare should be secondary. Medicare post-payment activities are designed to recover mistaken payments or conditional payments made by Medicare where there is a contested liability insurance (including self-insurance), no-fault insurance, or workers’ compensation which has resulted in a settlement, judgment, award, or other payment. CMS specialty contractors perform most of the MSP activity pre-payment.

The information is collected from applicable reporting entities for the purpose of coordination of benefits and the recovery of mistaken and conditional payments. Section 111 mandates the reporting of information in the form and manner specified by the Secretary, DHHS. Data the Secretary collects is necessary for both pre-payment and post-payment coordination of benefit purposes, including necessary recovery actions.

Both GHP and NGHP entities have had and continue to have the responsibility for determining when they are primary to Medicare and to pay appropriately, even without the mandatory Section 111 process. Insurers should always collect the NGHP, GHP and GHP prescription drug information that CMS requires in connection with Section 111 of the MMSEA. *Form Number:* CMS-10265 (OMB control number: 0938-1074); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 21,141; *Total Annual Responses:* 8,079,697; *Total Annual Hours:* 618,060. (For policy questions regarding this collection contact Richard Mazur at 410-786-1418.)

2. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Part D Coordination of Benefits Data; *Use:* Sections 1860D-23 and 1860D-24 of the Act require the Secretary to establish requirements for prescription drug plans to promote effective coordination between Part D plans and SPAPs and other payers. These Part D Coordination of Benefits (COB) requirements have been codified into the Code of Federal Regulations at 42 CFR 423.464. In particular, CMS’ requirements relate to the following elements: (1) Enrollment file sharing; (2) claims processing and payment; (3) claims reconciliation reports; (4) application of the protections against high out-of-pocket expenditures by tracking TrOOP expenditures; and (5) other processes that the Secretary determines.

This information collection assists CMS, pharmacists, Part D plans, and other payers coordinate prescription drug benefits at the point-of-sale and track beneficiary True out-of-pocket (TrOOP) expenditures using the Part D Transaction Facilitator (PDTF).

The collected information will be used by Part D plans, other health insurers or payers, pharmacies and CMS to coordinate prescription drug benefits provided to the Medicare beneficiary. Part D plans share data with each other and with CMS. The types of data collected for sharing include enrollment data, other health insurance information, TrOOP and Gross drug spending and supplemental payer data. *Form Number:* CMS-10171 (OMB control number: 0938-0978); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 63,910; *Total Annual Responses:* 770,855,926; *Total Annual Hours:* 938,065. (For policy questions regarding this collection contact Chad Buskirk at 410-786-1630.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Current Beneficiary Survey; *Use:* CMS is the largest single payer of health care in the United States. The agency plays a direct or indirect role in administering health insurance coverage for more than 120 million people across the Medicare, Medicaid, CHIP, and Exchange populations. A critical aim for CMS is to be an effective steward, major force, and trustworthy partner in supporting innovative approaches to improving quality, accessibility, and affordability in healthcare. CMS also aims to put patients first in the delivery of their health care needs.

The Medicare Current Beneficiary Survey (MCBS) is the most comprehensive and complete survey available on the Medicare population and is essential in capturing data not otherwise collected through our operations. The MCBS is a nationally-representative, longitudinal survey of Medicare beneficiaries that we sponsor and is directed by the Office of Enterprise Data and Analytics (OEDA). The survey is usually conducted in-person but can also be conducted by phone. It captures beneficiary information whether aged or disabled, living in the community or facility, or serviced by managed care or fee-for-service. Data produced as part of the MCBS are enhanced with our administrative data (e.g., fee-for-service claims, prescription drug event data, enrollment, etc.) to provide users with more accurate and complete estimates of total health care costs and utilization. The MCBS has been continuously fielded for more than 28 years, encompassing over 1 million interviews and more than 100,000 survey participants. Respondents participate in up to 11 interviews over a four-year period. This gives a comprehensive picture of health care costs and utilization over a period of time.

The MCBS continues to provide unique insight into the Medicare program and helps CMS and our external stakeholders better understand and evaluate the impact of existing programs and significant new policy initiatives. In the past, MCBS data have been used to assess potential changes to the Medicare program. For example, the MCBS was instrumental in supporting the development and implementation of the Medicare prescription drug benefit by providing a means to evaluate prescription drug costs and out-of-pocket burden for these drugs to Medicare beneficiaries. Beginning in 2021, this proposed revision to the

clearance will add a few new measures to existing questionnaire sections and will add a new COVID-19 Questionnaire section previously approved by OMB on August 7, 2020 under Emergency Clearance 0938-1379. The revisions will result in an increase in respondent burden due to the addition of the new items.

Form Number: CMS-P-0015A (OMB: 0938-0568); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 13,656; *Total Annual Responses:* 35,998; *Total Annual Hours:* 53,176 (For policy questions regarding this collection contact William Long at 410-786-7927.)

Dated: December 2, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020-26862 Filed 12-4-20; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10733]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of

information technology to minimize the information collection burden.

DATES: Comments must be received by February 5, 2021.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

2. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10733 Data Management Plan Self-Attestation Questionnaire (DMP SAQ)

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a

60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Data Management Plan Self-Attestation Questionnaire (DMP SAQ); *Use:* The Privacy Act of 1974 allows for discretionary releases of data maintained in Privacy Act protected systems of records under § 552a(b) (Conditions of Disclosure). The mandate to account for disclosures of data under the Privacy Act is found at § 552a(c)(Accounting of Certain Disclosures). This section states that certain information must be maintained regarding disclosures made by each agency. This information is: Date, Nature, Purpose, and Name/Address of Recipient. Section 552a(e) sets the overall Agency Requirements that each agency must meet in order to maintain records under the Privacy Act. The Data Use Agreement (DUA) form is needed as part of the review of each CMS data request to ensure compliance with the requirements of the Privacy Act for disclosures that contain PII.

The DUA legally binds the user to the Agreement's terms. The user must agree to all the terms and sign off on them prior to the release or access to data files containing protected health information, and individual identifiers. The DMP SAQ is a technical, evidence-based questionnaire that DUA users must complete as part of the data request packet. The DMP SAQ will enable CMS to evaluate researcher data systems to ensure that CMS data are adequately secured and appropriately protected, as per the Privacy Act and the HIPAA Privacy Rule. The DMP SAQ also allows CMS to measure compliance through the implementation of security and privacy controls as outlined in the National Institute of Standards and Technology (NIST) Special Publication 800-53 and the Centers for Medicare & Medicaid Services (CMS) Information Security and Acceptable Risk Safeguards (ARS). The second component of the DMP SAQ is to provide ongoing oversight. All organizations will be subject to routine audits of the environments used to store and process CMS data, as described in their organizational-level DMP SAQ.

Form Number: CMS–10733 (OMB control number: 0938–New); *Frequency:* Annually; *Affected Public:* Private Sector, State, Local, or Tribal Governments, Federal Government, Business or other for-profits, Not-for-profits institutions; *Number of Respondents:* 1,000; *Total Annual Responses:* 1,000; *Total Annual Hours:* 1,500. (For policy questions regarding this collection contact James Krometis at 410–786–0340.)

Dated: December 2, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–26859 Filed 12–4–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement; Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: Statement of Organization, Functions, and Delegations of Authority.

The Administration for Children and Families (ACF) has reorganized the Office of Child Support Enforcement. This reorganization realigns the functions of the Office of Child Support Enforcement. It eliminates the Division of Performance and Statistical Analysis and moves the functions to the Division of Federal Systems.

FOR FURTHER INFORMATION CONTACT: Scott Lekan, Acting Commissioner, Office of Child Support Enforcement, 330 C Street SW, Washington, DC 20201; (202) 401–9369.

SUPPLEMENTARY INFORMATION: This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), as follows: Chapter KF, Office of Child Support Enforcement (OCSE), as last amended in 78 FR 60880–60883, October 2, 2013.

I. Under Chapter KF, Office of Child Support Enforcement, delete KF in its entirety and replace with the following:

KF.00 MISSION. The Office of Child Support Enforcement (OCSE) advises the Secretary, through the Assistant

Secretary for Children and Families/ Director of the Office of Child Support Enforcement, on matters pertaining to the child support and access and visitation programs. OCSE provides direction, guidance, and oversight to state and tribal child support programs, the Central Authority for international child support cases, and state access and visitation programs for activities authorized and directed by title IV–D of the Social Security Act and other pertinent legislation. OCSE's core mission is dedicated to establishing paternity and obtaining child support in order to encourage responsible parenting, family self-sufficiency, and child well-being, and to recognize the essential role of both parents in supporting their children. The national child support program assures that assistance in obtaining support, including financial and medical, is available to children, through locating parents, establishing paternity, establishing and modifying support obligations, and monitoring and enforcing those obligations. The specific responsibilities of this Office are to develop, recommend, and issue policies, procedures, and interpretations for state and tribal programs for locating noncustodial parents, establishing paternity, and obtaining child support; approval procedures for review and approval or disapproval of state and tribal plan material; conduct audits of state child support programs; assist states and tribes in establishing adequate reporting procedures and maintaining records for the operation of their child support programs and of amounts collected and disbursed under the child support program and the costs incurred in collecting such amounts; operate the United States and Tribes Central Authority for International Child Support; monitor the access and visitation and fatherhood programs; and provide technical assistance and training to the states and tribes to help them develop effective procedures and systems for services provided by the child support program, including automation, outreach, referral, and case management in partnership with employers, courts, and responsible fatherhood, workforce, and other programs to increase the long-term reliability of support payments available to children. OCSE also operates competitive grant programs for child support in collaboration with several other components within ACF. It also operates the Federal Parent Locator Service (FPLS); certifies to the Secretary of the Treasury amounts of child support obligations that require

collection in appropriate instances; transmits to the Secretary of State certifications of arrearages for passport denial; submits reports to Congress, as requested, on activities undertaken relative to the child support program; approves advance data processing planning documents; and reviews, assesses, and inspects planning, design, and operation of state and tribal management information systems. FPLS also assists other federal, state, and local agencies not involved in child support to fulfill their respective missions, save taxpayer dollars, and improve service to the public.

KF.10 ORGANIZATION. The Office of Child Support Enforcement is headed by the Director. The office is organized as follows:

- Office of the Director/Deputy Director/ Commissioner (KFA)
- Office of Audit (KFAA)
- Office of the Deputy Commissioner (KFB)
- Division of Business and Resource Management (KFB2)
- Division of Customer Communications (KFB3)
- Division of Policy and Training (KFB5)
- Division of Program Innovation (KFB7)
- Division of Regional Operations (KFB8)
- Child Support Services Regional Program Units (KFB8DI–X)
- Division of Federal Systems (KFB9)
- Division of State and Tribal Systems (KFB10)

KF.20 FUNCTIONS. Office of the Director and Deputy Director/ Commissioner (KFA): The Director is also the Assistant Secretary for Children and Families and is directly responsible to the Secretary for carrying out OCSE's mission. The Deputy Director/ Commissioner has day-to-day operational responsibility for OCSE. The Deputy Director/Commissioner assists the Director in carrying out responsibilities of the Office and provides direction and leadership to the Office of the Deputy Commissioner and the Office of Audit.

The Deputy Director/Commissioner provides leadership and direction to OCSE and is responsible for developing regulations, guidance, and standards for state/tribes to follow in locating absent parents; establishing paternity and support obligations; maintaining relationships with Department officials, other federal departments, state and tribal and local officials, and private organizations and individuals interested in the child support program; coordinating and planning child support program activities to maximize program effectiveness; program outreach, as well as access and

visitation programs and advocacy interests; and approving all instructions, policies, and publications. The Deputy Director/Commissioner is also responsible for the operations and maintenance of FPLS, management and financial analysis and strategy development, internal OCSE operations, and compliance with federal laws and policies. The Deputy Director/Commissioner is responsible for collaborating with the Office of Legislative Affairs and Budget and the Government Accountability Office on studies related to the child support program. In addition, the Deputy Director/Commissioner maintains OCSE's Continuity of Operations Plan.

Office of Audit (KFAA): The Office of Audit develops, plans, schedules, and conducts periodic audits of child support programs in accordance with audit standards promulgated by the Comptroller General. The office is headed by an Office Director and reports directly to the Commissioner. The Office conducts audits, at least once every 3 years (or more frequently if it is determined that a state has unreliable data or fails to meet the performance standards) to determine the reliability of state financial and statistical data reporting systems used in calculating the performance indicators used as the basis for the payment of performance-based financial incentives to the state. These audits include testing of the data produced by the system to ensure that it is valid, complete, and reliable. The audits also include a review of the state's physical security and access controls.

The Office will also conduct financial audits to determine whether federal and other funds made available to carry out the child support program are being appropriately expended, and properly and fully accounted for. These audits will also examine collections and disbursements of support payments for proper processing and accounting. In addition, the Office will also conduct other audits and examinations of program operations, as may be necessary or requested by program officials for the purpose of improving the efficiency, effectiveness, and economy of state, tribal, and local child support activities.

The Office develops consolidated reports for the Commissioner, based on findings, provides specifications for the development of audit regulations and requirements for audits of state programs, and coordinates and maintains effective liaison with the HHS Inspector General's Office and with the Government Accountability Office.

Office of the Deputy Commissioner (KFB): The Deputy Commissioner reports to the Deputy Director/Commissioner and assists the Commissioner in carrying out the responsibilities of OCSE. The Deputy Commissioner provides day-to-day supervision and oversight of the Division of Business and Resource Management, Division of Customer Communications, Division of Policy and Training, Division of Program Innovation, Division of Regional Operations, Division of Federal Systems, and Division of State and Tribal Systems. The Deputy Commissioner leads OCSE outreach efforts and builds collaborations with federal, state, tribal, local, and community agencies to efficiently improve child support services.

The Office of the Deputy Commissioner provides coordination for all OCSE contracts and internal IT systems.

Division of Business and Resource Management (KFB2): The Division of Business and Resource Management (DBRM) is responsible for the overall management and operation of OCSE administrative services. The Division is headed by a Division Director who reports directly to the Deputy Commissioner. DBRM leads all efforts related to personnel and the formulation and execution of the discretionary budgets for OCSE program funds and federal administration funds. DBRM develops, implements, and manages all personnel activities; provides guidance on all labor and employee relations; coordinates performance management, employee engagement, and recognition; provides training and technical assistance on business administrative services; manages OCSE-controlled space, facilities, assets, and messenger services; and provides for health and safety. DBRM also serves as the funding authority for all OCSE acquisitions and grant opportunities, procures all goods and services, and coordinates all travel and conference management activities.

Division of Customer Communications (KFB3): A Division Director leads the Division of Customer Communications (DCC) and reports to the Deputy Commissioner. The Division has two branches. The *Customer Service* branch responds to requests for information on specific child support cases from custodial and noncustodial parents, the White House, members of Congress, Office of Inspector General, state agencies, reciprocating countries, and various interest groups. The *Program Communications* branch plans, designs, and executes public outreach and communications campaigns to

convey information about the child support program and engage with child support stakeholders. The branch is responsible for providing guidance on strategies and approaches to improve public understanding of and access to OCSE programs and policies, develops and publishes informational materials on the OCSE website, and engages with our stakeholders through social media. With these information channels, DCC serves as a focal point for consistent, clear, and accurate program communication.

Division of Policy and Training (KFB5): The Division of Policy and Training (DPT) proposes and implements national policy for the child support program and provides policy guidance and interpretations to states and tribes in developing and operating their programs according to federal law. DPT is headed by a Division Director who directly reports to the Deputy Commissioner and is supported by the *Policy* Branch and the *Training* Branch. The *Policy* Branch develops legislative proposals and regulations to implement new legislation, court decisions, or directives from higher authority, and provides comments on pending legislative proposals. It develops new state plan preprint requirements and procedures for review and approval by the Division of Regional Operations. Additionally, the *Policy* Branch reviews the state plan submittals and prepares justifications for plan disapproval action. DPT coordinates with the Office of General Counsel on pending departmental appeals and collaborates with ACF on audit resolution. DPT also implements Central Authority activities for international support enforcement and functions as the U.S. Central Authority for international support enforcement. The *Training* Branch provides national direction and leadership for OCSE training activities to increase child support program effectiveness at federal, state, and tribal levels; coordinates child support program training activities; and provides logistical support for child support training events, meetings, and conferences.

Division of Program Innovation (KFB7): The Division of Program Innovation (DPI) develops, evaluates, and refines new strategies to improve child support program effectiveness, and disseminates information about promising and evidence-based practice. The Division is headed by a Division Director who reports directly to the Deputy Commissioner. DPI manages research and demonstration projects, including Section 1115 grants and waivers and Special Improvement

Project grants, and promotes program evaluation at the state and local levels. DPI also implements special projects of regional or national significance, pilots new child support approaches, and administers the Access and Visitation Grant Program.

The Division of Regional Operations (KFB8): The Division of Regional Operations (DRO) provides direct oversight of all child support Regional Program Unit operations, including ensuring customer-focused partnerships to child support programs and services, and implementation of child support regional operations, policies, budgets, and program compliance of all 10 regions. This includes oversight of Regional Program Units providing technical assistance and support to state and tribal child support agencies. The Division is headed by a Director, who reports directly to the Deputy Commissioner. DRO provides management and oversight of the Regions through coordinating activities between Central Office Divisions and the Regional Program Units. The Division provides information to improve public understanding of and across to OCSE programs and policies. The Division is responsible for providing oversight of all Regional representation at conferences and meetings both within the child support community and other collaborative programs and partners. The Division is also responsible for the management, receipt, review, and analysis of public inquiries and the preparation of formal (both written and electronic) responses to external inquiries for child support program information and assistance in obtaining child support services.

Child Support Enforcement Regional Program Units (KFB8DI-X): Each OCSE Regional Program Unit is headed by the OCSE Regional Program Manager who reports to the Director of the Division of Regional Operations. The OCSE Regional Program Manager, through regional staff and in collaboration with program stakeholders, is responsible for (1) providing program and technical administration of the ACF entitlement and discretionary programs related to OCSE; (2) collaborating with the ACF central office, states, tribes, and other external programs and grantees on all significant program and policy matters; (3) providing technical assistance and training to entities responsible for administering OCSE programs to resolve identified problems; (4) ensuring that appropriate procedures and practices are adopted; (5) working with appropriate state, tribal, and local offices to develop innovative practices to support family self-sufficiency; and

(6) monitoring the programs to ensure their efficiency and effectiveness, and ensuring that these entities conform to federal laws, regulations, policies, and procedures governing the programs.

Division of Federal Systems (KFB9): The Division of Federal Systems (DFS) is responsible for the design, development, deployment, maintenance, and implementation of FPLS. The Division is headed by a Division Director who directly reports to the Deputy Commissioner. FPLS is made up of a group of data sharing, collection, and program systems, such as the federal tax refund offset program, that helps OCSE support the core mission of the child support program and helps prevent improper payments in state and federal benefit programs through NDNH data matching. DFS provides states with data to help them locate parents, establish fair and equitable child support obligations, process income withholding and payments, collect and enforce past-due child support, and communicate effectively and efficiently. DFS provides outreach, technical support, and training to child support agencies, employers, insurers, financial institutions, and other private and government partners to ensure that the FPLS systems are used to their maximum benefit.

DFS is responsible for automation of data and timeliness of transactions. Other responsibilities include, but are not limited to, oversight of collaborations with the Social Security Administration (SSA) on technical aspects of their use of OCSE's data and OCSE's use of SSA data center resources; conduct analyses and feasibility assessments; develop requirements; and design, develop, and implement system enhancements to increase efficiencies and support users of FPLS information. DFS also ensures that all IT projects are managed according to OMB/HHS/ACF standards for architecture, capital planning, security, and privacy, and fall within tolerances for acceptance.

Additionally, DFS provides guidance, analysis, technical assistance, and oversight to state and tribal child support programs regarding performance measurement; statistical, policy, and program analysis; synthesis and dissemination of data sets to inform the program; and application of emerging technologies, such as business intelligence and data analytics to improve and enhance the effectiveness of programs and service. DFS is also responsible for collection, compilation, analysis, and dissemination of state and tribal data to Congress and the general

public. The Division also provides statistical and budgeting support in coordination with other divisions. DFS is responsible for promoting public access and understanding of data; managing academic/research projects; and providing support for researchers. DFS provides technical assistance to states in developing their self-assessment capabilities and implementing the annual reporting requirements contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Division of State and Tribal Systems (KFB10): The Division of State and Tribal Systems (DSTS) reviews, analyzes, and approves/disapproves state and tribal requests for Federal Financial Participation for automated systems development and operations activities that support the child support program. DSTS is headed by a Division Director who directly reports to the Deputy Commissioner. DSTS provides assistance to states and tribes in developing or modifying automation plans to conform to federal requirements. DSTS monitors approved state and tribal systems development activities; certifies state-wide automated systems; and conducts periodic reviews to assure state and tribal compliance with regulatory requirements applicable to automated systems supported by Federal Financial Participation. DSTS provides guidance to states and tribes on functional requirements for these automated information systems, and works with federal, state, local, and tribal health and human services agencies to foster and promote interoperability and collaboration across the automated systems that support their programs. The Division promotes interstate and tribal transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems and technology. It provides development support and guidance to tribes on the installation, implementation, and maintenance of the Model Tribal System.

II. Continuation of Policy. Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to organizational components affected by this notice within ACF, heretofore issued and in effect on this date of this reorganization are continued in full force and effect.

III. Delegation of Authority. All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further

redelegations, provided they are consistent with this reorganization.

IV. Funds, Personnel, and Equipment. Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies, and other resources.

This reorganization will be effective upon date of signature.

Authority: 42 U.S.C. 652

Dated: December 1, 2020.

Megan E. Steel,

*Office of the Executive Secretariat,
Administration for Children and Families.*

[FR Doc. 2020-26778 Filed 12-4-20; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2020-N-0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that DANYELZA (naxitamab-gqgk) manufactured by Y-mAbs Therapeutics, Inc., (Cato Research LLC., US Agent) meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Althea Cuff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-4061, FAX: 301-796-9856, email: althea.cuff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will award priority review vouchers to sponsors of approved rare pediatric disease product

applications that meet certain criteria. FDA has determined that DANYELZA (naxitamab-gqgk) manufactured by Y-mAbs Therapeutics, Inc., (Cato Research LLC., US Agent), meets the criteria for a priority review voucher.

DANYELZA (naxitamab-gqgk) indicated, in combination with granulocyte-macrophage colony-stimulating factor (GM-CSF), for the treatment of pediatric patients 1 year of age and older and adult patients with relapsed or refractory high-risk neuroblastoma in the bone or bone marrow who have demonstrated a partial response, minor response, or stable disease to prior therapy.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to <http://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm>. For further information about DANYELZA (naxitamab) go to the "Drugs@FDA" website at <http://www.accessdata.fda.gov/scripts/cder/daf/>.

Dated: December 1, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020-26801 Filed 12-4-20; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2019-N-5900]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Endorser Status and Explicitness of Payment in Direct-to-Consumer Promotion

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 January 6, 2021.

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 Comment" or by using the search function. The title of this information collection is "Endorser Status and Explicitness of Payment in Direct-to-Consumer Promotion." 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, PRASStaff@fda.hhs.gov.

For copies of the questionnaires contact: Office of Prescription Drug Promotion (OPDP) Research Team, DTCresearch@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.

Endorser Status and Explicitness of Payment in Direct-to-Consumer Promotion

OMB Control Number 0910—NEW

I. Background

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion's (OPDP) mission is to protect the public health by helping to ensure that prescription drug promotion is truthful, balanced, and accurately communicated. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission. Our research focuses in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and

product characteristics impact the communication and understanding of prescription drug risks and benefits; focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience, and our focus on research quality aims at maximizing the quality of our research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first topic area, advertising features.

Because we recognize that the strength of data and the confidence in the robust nature of the findings is improved by utilizing the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: <https://www.fda.gov/aboutfda/centersoffices/officeofmedicalproducts>

and tobacco/cder/ucm090276.htm. The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a survey on direct-to-consumer (DTC) advertisements conducted in 1999.

Advertisers have used celebrity endorsers for years, and DTC pharmaceutical promotion is no different. As researchers studied the influence of celebrity endorsers, they theorized that a correspondence bias occurs in which people believe that endorsers truly believe what they are saying. LaTour and Smith (Ref. 1) examined whether a pharmacist, physician, celebrity, or consumer would be most persuasive in advertisements for four different types of OTC products. They found that endorsements by expert physicians and pharmacists were the most likely to lead to purchase intentions, followed by endorsements by consumers, and lastly, by celebrities. The type of OTC product did not affect the persuasiveness of an endorsement.

Bhutada and Rollins (Ref. 2) recently completed a study examining the role of endorser type (*i.e.*, celebrity vs. expert vs. non-celebrity), and endorser and consumer gender in product DTC ads. They found, like LaTour and Smith (Ref. 1), that expert endorsers were thought of as higher in credibility and generally resulted in the same amount of attention as celebrities. The authors did not find that endorsement by experts resulted in greater consumer intention to pursue the drug product.

We propose to extend previous research by examining four types of endorsers in two separate studies (celebrity, physician, patient, non-celebrity influencer)¹ and examining whether the presence of a disclosure of their payment status influences participant reactions. We propose to also test two different types of disclosure language—one direct and more consumer-friendly, and one less direct.

To complete this research, we propose the following concurrent studies.²

Study 1

TABLE 1a—STUDY 1 DESIGN—PRETEST
[0.80 power, 0.10 alpha, small effect size f=.2]

Payment disclosure	Endorser			Total
	Celebrity	Physician	Patient	
Present	50	50	50	150
Absent	33	33	33	99
Total	83	83	83	249

TABLE 1b—STUDY 1 DESIGN—MAIN STUDY
[0.90 power, 0.05 alpha, small effect size f=.2]

Payment disclosure	Endorser			Total
	Celebrity	Physician	Patient	
Present	81	81	81	243
Absent	54	54	54	162
Total	135	135	135	405

Study 1 will manipulate endorser type (three levels: Celebrity, physician, patient) and payment disclosure (two levels: Present, absent) within a print DTC ad for a fictitious acne product. For this study, we will recruit 654 general population individuals (249 pretest; 405 main study) from the Kantar Lightspeed

national nonprobability internet panel. All participants must report familiarity with the celebrity to be included in our study. The celebrity will be one who has publicly spoken out about acne. We are not divulging the identity of the celebrity in this public forum to maintain the integrity of our research

process. Stock photos will be used to depict a physician and a patient in the other experimental conditions. Participants will be randomly assigned to see one of the endorsers and to see the ad either with or without a payment disclosure. The payment disclosure in Study 1 will be determined in cognitive

¹ A “non-celebrity influencer” is a person who has gained a following on a blog, a Twitter feed, or other social media outlet. In the 60-day notice, the term “influencer” was used; we have added language to specify influencers who were not

previously celebrities before their social media activities.

² For case allocation, the literature suggests that some proportion of consumers may not recall seeing the disclosure statement in the advertisement (see,

for example, Boerman et al.; Ref. 3). Rather than allotting equal numbers of cases to each condition, we will assign more cases to the disclosure present condition to increase power in these cells.

testing but will be similar to:

“[Endorser] has been paid to appear in this ad for Drug X.” *Study 2*

TABLE 2a—STUDY 2 DESIGN—PRETEST
[0.80 power, 0.10 alpha, small effect size f=.2]

Payment disclosure	Endorser		Total
	Influencer	Patient	
Present-Direct	50	50	100
Present-Indirect	50	50	100
Absent	33	33	66
Total	133	133	266

TABLE 2b—STUDY 2 DESIGN—MAIN STUDY
[0.90 power, 0.05 alpha, small effect size f=.2]

Payment disclosure	Endorser		Total
	Influencer	Patient	
Present-Direct	81	81	162
Present-Indirect	81	81	162
Absent	54	54	108
Total	216	216	432

In Study 2, we will also manipulate endorser type, examining a patient and an internet influencer, one who provides online content to a number of followers. We will also manipulate the explicitness of the payment disclosure, resulting in a 2 (endorser: Influencer, patient) by 3 (payment disclosure: Present-direct, present-indirect, absent) between-subjects design. The disclosure will be direct (e.g., “Paid ad. . .”), indirect (e.g., #sp for “sponsored”), or absent. The setting for this study will be an Instagram post for a fictitious endometriosis product. This study partially replicates Study 1 and extends it by further examining the explicitness of payment as another manipulated variable and using a different set of endorser types and in a different promotional setting.

For Study 2, we will recruit 698 (266 pretest; 432 main study) followers of an internet influencer who maintains an Instagram page with more than 500,000 followers and has posted about endometriosis. As in the first study, we are not revealing the influencer’s identity in this public forum to maintain the integrity of the study.

In both studies, we are interested in the role of endorsement and disclosure of payment status on participants’ recall, benefit and risk perceptions, and behavioral intentions. Participants will view one promotional piece and answer questions via the internet. The study is expected to take less than 20 minutes to complete. Dependent variables will include attention to disclosure

statement and risk/benefit information; retention of risk/benefit information; recognition of piece as promotion and endorser as paid; perceived benefits and risks, attitudes toward the product, endorser, and ad; and behavioral intentions, such as asking a doctor about the drug.

In the **Federal Register** of January 28, 2020 (85 FR 4994), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received six submissions that were PRA-related. One submission (<https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=FDA-2019-N-5900&refD=FDA-2019-N-5900-0001>) was a brief statement of support for the research and is not addressed further. Within the remaining five submissions, FDA received multiple comments that the Agency has addressed below. For brevity, some public comments are paraphrased and, therefore, may not reflect the exact language used by the commenter. We assure commenters that the entirety of their comments was considered even if not fully captured by our paraphrasing in this document. The following acronyms are used here: DTC = direct-to-consumer; FDA and “The Agency” = Food and Drug Administration; OPDP = FDA’s Office of Prescription Drug Promotion; and FTC = Federal Trade Commission.

(Comment 1) One comment suggested that the proposed research, at least in part, is duplicative of information otherwise reasonably available to FDA.

The comment pointed out that the Notice cites three scientific references, and it does not address the other literature that exists on the subject of endorsers in advertising. The comment recommended that FDA assemble and review the relevant literature on endorsement to ensure the research questions have not already been answered.

(Response) A literature review was conducted as part of this project that identified relevant literature. We identified a significant gap in the literature regarding the impact of social media influencers in prescription drug DTC advertisements, as well as a lack of information about the impact of explicit payment disclosure. The research questions outlined in our proposed research were designed to address this gap.

(Comment 2) One comment suggested that, although the studies contain clear variables, they appear to lack clearly defined primary outcomes and prespecified hypotheses for testing. The comment also noted that the studies do not appear to be designed to account for Type I error; thus, the results may be uninterpretable. The comment recommended that FDA propose a primary endpoint for each study and power each study to test it.

(Response) Specific hypotheses have been developed for each of the outcome variables, as described earlier in the notice. We will adjust for multiple comparisons using the Bonferroni correction.

(Comment 3) One comment suggested that it is unclear how FDA came up with the proposed sample sizes for the two related studies. For example, the comment stated that the chart for pretest 1 contains the following notation: “(0.80 power, 0.10 alpha, small effect size $f=.2$),” but it is unclear what $f=.2$ means in this context. The comment requested that FDA explain what statistical model it used to estimate the study size and how it determined that the relevant effect size is .2.

(Response) $f=.2$ is a common standard used to calculate small effect size in experimental studies (Ref. 4). We used G*Power to estimate study size (Ref. 5).

(Comment 4) One comment suggested that the proposed research is unnecessary to the proper performance of FDA’s functions because the FTC takes the lead on regulating endorsement. The comment stated that FDA has not addressed the extensive framework and guidance available from the FTC on this topic. The comment further stated that, although use of an endorser might conceivably inform an assessment of whether advertising or promotion is false or misleading, it is not clear how FDA views this new research on endorser status as fitting into its core regulatory jurisdiction or activities.

(Response) FDA and the FTC have a long history of working collaboratively to protect American consumers. While the FTC does regulate endorsement in many types of commercial advertisements, FDA has authority to regulate prescription drug advertising with respect to the safety and effectiveness of such drugs. In line with FDA’s responsibility to ensure that prescription drug advertising and other promotional communications are truthful and non-misleading, the present research will provide data on how elements related to endorsement presentations in prescription drug promotion impact audience perception and comprehension. Collecting this data is critical to FDA’s science-based approach to assessing prescription drug promotion to determine whether it communicates information about prescription drugs to consumers in a truthful, non-misleading way. We note that as part of the process of developing the present research, FDA carefully evaluated the FTC guidance on endorser issues.

(Comment 5) One comment recommended that alignment and input should be obtained from the FTC regarding the design of the study and usability of the results.

(Response) We evaluated the current FTC guidance on endorsement

disclosure when developing this study and all relevant elements of its design, including our hypotheses, test stimuli, etc.

(Comment 6) One comment suggested that the research may be skewed by the influence of a particular celebrity. The comment recommended that the study be amended so it is not subject to bias by the influence of one particular well-known celebrity.

(Response) Familiarity with an endorser has shown to be an important factor in attention to DTC advertisements, but the evidence is less strong that familiarity uniquely affects other outcomes such as behavioral intention (see, for example, Refs. 2 and 6). The celebrity used in Study 1 will have high levels of public recognition, so we anticipate few participants will be filtered out due to low levels of familiarity with endorser. We recognize that the individual characteristics of the celebrity may drive responses. This possibility is an unavoidable limitation of the study design, and we will be transparent when reporting results.

(Comment 7) One comment recommended that FDA use #ad instead of #sp. The comment noted that FTC has stated that #ad is an effective disclosure of sponsorship.

(Response) Our review of current practices shows that vendors continue to indicate endorsement by #sp online. An indirect disclosure such as #sp serves as a useful comparator to a direct disclosure such as “Paid ad. . .”, helping us answer the research question of whether direct and indirect acknowledgements of endorsement vary in their influence on attitudes and perceptions.

(Comment 8) One comment recommended that FDA incorporate some type of control into each study.

(Response) We have designed these studies to include a control. The control, in both studies, is a duplicate version of the promotion featuring endorsement by a patient, as opposed to a celebrity or influencer, without inclusion of a payment disclosure.

(Comment 9) One comment suggested that FDA should ensure that the hypothetical products used in the proposed surveys do not too closely resemble real products. For example, the conditions of use and the risk of the hypothetical products should not mirror FDA-approved labeling language for any marketed products. In addition, FDA should only present hypothetical drug advertisements for diseases with many treatment options from multiple sponsors. Otherwise, the comment states that FDA’s research could

inadvertently harm one particular sponsor.

(Response) The prescription drugs used in this study, while based on existing prescription treatments, are fictitious with names and branding that do not mirror any marketed products. Although we have created the pieces to be as realistic as possible, FDA does not intend to single out any real product on the basis of our fictional promotion. We specifically use fictitious products and materials to avoid the confound of prior knowledge of actual products. Moreover, it is the endorser type and messaging around the endorsement disclosure that are being investigated. The fictional drug is not a study variable and therefore is held constant.

(Comment 10) One comment suggested that the route of drug administration may influence the participants’ responses, as oral administration and inhaled medication is preferable compared to injections. Therefore, the comment suggested that the study use fictitious drugs with routes of administration that are similar to top advertised DTC prescription drugs.

(Response) This is outside the scope of study objectives. The goal of the studies is to understand the effect of endorsement and payment disclosure on perceived risks and benefits of DTC promotion. Because the same drug is being presented in each experimental condition, the effects of mode of administration are being held constant in each study; therefore, any observed effects are not related to the route of administration chosen.

(Comment 11) One comment suggested that in order to increase internal validity, the location of the disclosures in the promotional pieces should be consistent across endorser and/or disclosure type.

(Response) FDA will ensure that for each study, disclosures will appear in the same area of the promotional piece, using similar font and style treatment.

(Comment 12) One comment suggested that acne and endometriosis drugs are not representative of the top advertised prescription drugs and that the current proposed study design, therefore, may not represent the most advertised DTC drugs in the market.

(Response) The purpose of the studies is to understand the effect of endorsement and payment disclosure on perceived risks and benefits of DTC promotion. The value of our approach is random assignment to experimental conditions and control of extraneous variables. Choice of drug is not a study variable and therefore held constant. Although the type of drug may play a

role in the perceptions of risks and benefits, the value of our study is the comparisons between experimental conditions.

(Comment 13) Two comments suggested that participants' unfamiliarity with the proposed conditions may bias their responses, so it may be more useful to include only patients with the condition as participants in each study.

(Response) The study population is those who are exposed to prescription drug advertisements. For Study 1, we chose a high incidence condition (acne) so that it would be relatable to a large segment of the population. Regardless of whether or not the condition is personally salient, the public is still exposed to these advertisements.

For Study 2, we chose a condition that is important to the influencer in the study—and this information would be known to many of her followers, who are the research audience for Study 2. Engagement and e-Word of Mouth have been shown to be important behavioral outcomes from social media promotion (Ref. 3). Thus, in a real-world setting, audience members may choose to comment on or share the advertised content with family or friends, regardless of whether or not they have the health condition themselves.

For both studies, we ask about personal experience and involvement with the health condition, and we will assess whether these variables have any effects.

(Comment 14) One comment suggested ensuring that neutral language is used when recruiting for Study 1's general population, so as not to select for participants that are more susceptible to the celebrity's influence. For example, the comment suggested that the study ask participants if they "recognize" the celebrity vs. if they are a "fan" of the celebrity.

(Response) In screeners for both studies, we ask if participants are "familiar" with celebrities/influencers, thus maintaining neutral language.

(Comment 15) Two comments suggested participants' familiarity with the endorser may bias responses and limit participant demographics. One comment suggested that recruiting participants from the follower list of an Instagram influencer, as proposed in Study 2, may skew the average age of the participants to be younger, especially if the influencer chosen for this study is a "handheld name" versus a "household name." The comment also suggested that the participants may have a female skew. Another comment suggested that the current inclusion criteria should be expanded to also

include followers of influencers with similar content, recognition, and follower demographics as the endorser being tested, which will increase external validity by encompassing viewers that would likely see the post through suggestions via Instagram's algorithm.

(Response) Familiarity with an endorser has been shown to be an important factor in attention given to DTC advertisements (Ref. 2), and that is one driver of an influencer's value as an endorser. By including endorser type as an experimental condition, we seek to isolate these effects. Thus, the biases inherent in these relationships are a necessary aspect of this topic area.

The study design is a between-subjects design. Because participants are only exposed to one promotional piece, the specific effects from behavioral bias can be isolated.

We agree with the commenter that Study 2 will have a younger, female skew. This is consistent with Instagram's audience more generally (Ref. 7). Advertisers who use Instagram influencers as endorsers will access the same audience (*i.e.*, Instagram followers) as in our study. To minimize confounds, we will limit the sample to the influencer's followers, who are likely to be the most influenced by her. Future research can be conducted on whether our findings extrapolate to men and older audiences.

(Comment 16) One comment suggested that to account for the potential bias in these studies, it would be useful to include questions relating to participant demographics in the surveys, such as age, gender, and attitude toward the celebrity or influencer, if they are not already included.

(Response) The survey includes questions about participant demographics and attitude toward endorser.

(Comment 17) One comment suggested that in order to prevent bias, the study should exclude consumers who work in healthcare or marketing settings, primary care providers that spend less than 50 percent of their time on patient care, and Department of Health and Human Service employees.

(Response) The studies in this research do not include physician participants. Consumers will be excluded if they work for a pharmaceutical company, an advertising agency, a market research firm, or the U.S. Department of Health and Human Services. They will also be screened out if they are not familiar with the celebrity/influencer, and, for Study 2, if

they are biologically male, as men cannot have endometriosis.

(Comment 18) One comment suggested that the questionnaire is too long and recommended deleting questions or rewording.

(Response) We have had individuals unfamiliar with the study test the survey for length, and we found it takes less than 20 minutes to complete. Moreover, we will also conduct pretesting to check timing and make adjustments, if necessary, based on the data from those pretests.

(Comment 19) One comment suggested we should consistently use balanced Likert scales with a neutral midpoint.

(Response) This is a matter of debate in the literature and has never been resolved. Many of our measures derive from previously validated scales, and we prefer to maintain the scales on which they were validated. However, where appropriate, we do use 5-point Likert scales with a neutral midpoint.

(Comment 20) One comment recommended rewording Q17 (in both study questionnaires) to state "What do you remember about the safety information presented?"

(Response) Q17 is a validated (OMB control number 0910-0861) closed-ended item asking how much risk information was read (with a thumbnail image highlighting the important safety information). In order to increase quality of response, we will keep the closed-ended item. Moreover, open-ended questions take longer to answer, and we want to maintain an appropriate length of time to complete the survey.

(Comment 21) One comment suggested that the adjectives that the respondent is asked to rank in Q18a–Q18e (Study 1) are redundant with only nuanced differences that may not be distinguishable to respondents, and therefore suggested these items be deleted. If they are retained, the comment suggested labeling answer choice #3 with "Neither unimportant nor important."

(Response) These items were adapted from Zaichowsky's Disease State Involvement scale (Ref. 8). The original validated items used a 7-point scale without a labeled midpoint. To be consistent with most of the items and with previous comments, we reduced the scale to 5 points. However, we did not include a labeled midpoint because it could result in under-response for values 2 and 4. This response applies to Q20 (Study 2) as well, where we want to ensure that individuals taking Study 2 on their mobile devices are not overwhelmed.

(Comment 22) One comment suggested that Q20 and Q21 (Study 1) may be redundant, and since Q20 uses more consumer-friendly language to seek respondent opinion on effectiveness of drug, the comment recommended removing Q21. This comment also applies to Q22 and Q23 of Study 2.

(Response) We will remove Q21 (Study 1) and Q23 (Study 2).

(Comment 23) One comment recommended that Q22 (Study 1) be framed differently to help understand how endorsers influence the understanding of safety and risk and that the answer choice should have an option for respondents who do not know.

(Response) We decline to make the recommended change because this is a validated item that FDA has used in past survey experiments to measure perceived risk likelihood.

(Comment 24) One comment questioned the utility of asking whether an endorser is “Attractive,” “Classy,” and “Elegant” (Q30, Study 1); whether a drug name and endorser name “go together” (Q31, Study 1); and how a subject feels about the life and values of the endorser (Q32, Study 1). The comment recommended that FDA consider deleting these questions.

(Response) In the marketing literature on celebrity endorsements, these three elements are well established as important moderators in attitude toward advertisement and behavioral intention. “Attractive,” “Classy,” and “Elegant” are elements in a 15-item scale validated by Ohanian (1990) to measure endorser credibility (Ref. 9). The literature refers to “whether a drug name and endorser go together” as “product match-up” (Ref. 10), and high match-up was recently shown to be predictive of behavioral intention for e-cigarettes (Ref. 11). The level of identification that consumers have with a celebrity endorser has been shown to influence how consumers attend to and process information in an advertisement (Refs. 12 and 13). Thus, we will maintain these questions.

(Comment 25) One comment suggested that, if the research is intended to assess the influence of endorsers or their payment status, Q15–Q17 in both surveys and Q20–Q27 for Study 1 and Q22–Q29 for Study 2 appear to be outside of the scope. With these questions, subjects would be asked to assess the risks and benefits of a drug based on an advertisement. The comment recommended that FDA delete these questions or revise them so they are focused instead on payment or endorsement.

(Response) As part of the examination of the effect of the endorser, one purpose of the study is to understand the effect of endorsement and payment disclosure in DTC promotion on perceived risks and benefits of a prescription drug. The questions mentioned in this comment measure these dependent variables—consumer perceptions of risk and benefit information presented in the promotion. We will maintain these questions in order to assess if endorsement and the payment disclosure have any effects on perceptions of risk and benefit information.

(Comment 26) One comment suggested that the structure of Q28 (Study 1) and Q30 (Study 2) should be consistent with other questions in this survey. It recommended changing each question to include “What is the likelihood” (e.g., What is the likelihood that you would ask your doctor to prescribe) and presenting answer choices in a 5-point Likert scale.

(Response) We will assess how this item functions in pretesting and make any change that is warranted.

(Comment 27) One comment suggested moving Q28a (Study 1) and Q30a (Study 2) up in the survey, after Q13, as this question could function as a priming question after initial viewing of ad.

(Response) Because this item is part of a validated scale (Ref. 14), we will maintain it at its current location in both surveys.

(Comment 28) One comment suggested that Q31 (Study 1) and Q33 (Study 2) construct and answer choices should align with other similarly constructed question and answer choices in this section of the survey.

(Response) This is a validated item (Ref. 15) to measure endorser-product match-up. Therefore, we will maintain the current format.

(Comment 29) One comment suggested that Q33 (Study 1) and Q35 (Study 2) could cause respondent confusion regarding what is meant by “background,” which could lead to uninterpretable results. It recommended explicitly stating what is meant by “background” (e.g., “I prefer a product recommended by an endorser because of his/her experience with this illness”).

(Response) This is a validated item (Ref. 16) that measures identification with endorser; thus, we will maintain its original form in both studies.

(Comment 30) One comment mentioned that Q43–Q45 (Study 1) and Q45–Q47 (Study 2) probe the level of influence that endorsers have over respondents and suggested adding a

question asking if the respondent has followed the advice of an endorser.

(Response) Q36–Q48 (Study 1) and Q45–47 (Study 2) are validated items in the celebrity-persona parasocial-involvement scale (Ref. 17); thus, we will maintain the integrity of the scale and not add another question in this series.

(Comment 31) One comment suggested that the debriefing statements in both questionnaires may serve the respondent better if placed earlier in the document as a disclaimer and suggested placing the disclaimer language prior to showing the promotional piece.

(Response) To maximize the attention participants give to this survey task, we do not wish to inform them of the information in the debriefing statement until they have completed the survey.

(Comment 32) One comment suggested that Q18 and Q19 (Study 2) are redundant, although respondents may not define a paid endorser post as advertising, and that the items seem irrelevant. It recommended removing Q18 from the questionnaire.

(Response) Previous experimental studies on social media promotion have found that participants did not consistently notice a payment disclosure or interpret a sponsored post as advertising (Ref. 1). These issues are central to the question of whether consumers process payment disclosures. Moreover, participants in cognitive testing distinguished between the two items.

(Comment 33) One comment noticed that Q20 in Study 2 is similar to Q18 in Study 1; however, answer choices are not provided in a similar construct. The comment recommended utilizing a 5-point Likert scale to measure the outcome.

(Response) We simplified the response scale for Study 2 items, where possible, to account for anticipated higher usage of mobile devices. Because we prefer a larger number of response options in general, we plan to maintain the 5-point Likert scale for Study 1, but use the 3-point scale in Study 2 to account for mobile devices.

(Comment 34) One comment suggested that Q24 (Study 2) could be framed differently to help understand how endorsers influence the understanding of safety and risk. The comment recommended asking “Do you recall the risk associated with the medication?” and suggested that the answer choice should have an option for respondents who do not know.

(Response) Q24 and Q25 from Study 2 are closed-ended questions that ask about recall of drug benefits and risks. To be balanced, the question stem and

response options should be parallel between the two items. Moreover, we cannot add additional open-ended questions to the survey without increasing participant fatigue. Thus, we

will maintain the closed-ended nature of the question. We recognize that this will be a difficult question for participants, and therefore, we prefer

not to provide an option for “don’t know.”

FDA estimates the burden of this collection of information as follows:

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Study 1 Screener	933	1	933	0.08 (5 minutes)	74.64
Study 1 Pretest	249	1	249	0.33 (20 minutes)	82.17
Study 1 Main Test	405	1	405	0.33 (20 minutes)	133.65
Study 2 Screener	1,417	1	1,417	0.08 (5 minutes)	113.36
Study 2 Pretest	266	1	266	0.33 (20 minutes)	87.78
Study 2 Main Test	432	1	432	0.33 (20 minutes)	142.56
Total					634.16

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references are on display with the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; these are not available electronically at <https://www.regulations.gov> as these references are copyright protected. Some may be available at the website address, if listed. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

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2. Bhutada, N.S. and B.L. Rollins (2015). “Disease-Specific Direct-to-Consumer Advertising of Pharmaceuticals: An Examination of Endorser Type and Gender Effects on Consumers’ Attitudes and Behaviors.” *Research in Social Administrative Pharmacy*, vol. 11(6), pp. 891-900.
3. Boerman, S.C., L.M. Willemsen, and E.P. Van Der Aa (2017). “‘This post is sponsored’: Effects of Sponsorship Disclosure on Persuasion Knowledge and Electronic Word of Mouth in the Context of Facebook.” *Journal of Interactive Marketing*, vol. 38, pp. 82-92.
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Dated: December 1, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020-26799 Filed 12-4-20; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLAK930000.L13100000. EI0000.241A]

Notice of 2021 Coastal Plain Alaska Oil and Gas Lease Sale and Notice of Availability of the Detailed Statement of Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of sale.

SUMMARY: The Bureau of Land Management (BLM) Alaska State Office will hold an oil and gas lease sale bid opening for tracts in the Coastal Plain of the Arctic National Wildlife Refuge.

DATES: The oil and gas lease sale bid opening will be at 10 a.m. Alaska Standard Time (AKST) on January 6,

2021. The BLM must receive all sealed bids by 4 p.m. AKST, Thursday, December 31, 2020. The Detailed Statement of Sale for the 2021 Coastal Plain Alaska Oil and Gas Lease Sale will be available to the public immediately after publication of this notice.

ADDRESSES: Sealed bids must be received at the BLM Alaska State Office, Attn: BLM Energy and Minerals Branch Chief; Bureau of Land Management, Alaska State Office, 222 West 7th Avenue, Mailstop 13, Anchorage, Alaska 99513-7504. The Detailed Statement of Sale for the 2021 Coastal Plain Alaska Oil and Gas Lease Sale will be available at the BLM Alaska website at <https://www.blm.gov/alaska>, and copies are available from the BLM Alaska Public Information Center (Public Room), 222 West 7th Avenue, Mailstop 13, Anchorage, Alaska 99513-7504; telephone 907-271-5960.

FOR FURTHER INFORMATION CONTACT: BLM Alaska Energy and Minerals Branch Chief, 907-271-4407. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The January 2021 Coastal Plain Alaska Oil and Gas Lease Sale will include tracts and acreage (no less than 400,000 acres) identified in the Detailed Statement of Sale and available for leasing under the Coastal Plain Oil and Gas Leasing Program Record of Decision issued in August 2020. The opening and reading of the bids for the 2021 Coastal Plain Alaska Oil and Gas Lease Sale will be available via video livestreaming at <https://www.blm.gov/live>. The Detailed Statement of Sale includes a description of the areas the BLM is offering for lease, as well as the lease terms, conditions, special stipulations, required operating procedures, and directions about how to submit bids. If you plan to submit one or more bids, please note that all bids must be sealed in accordance with the provisions identified in the Detailed Statement of Sale.

(Authority: Section 20001 of the Tax Cuts and Jobs Act (Public Law 115-97))

Chad B. Padgett,

State Director, Alaska.

[FR Doc. 2020-26788 Filed 12-4-20; 8:45 am]

BILLING CODE 4310-JA-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-582]

Monitoring of Fresh or Chilled Bell Peppers

AGENCY: International Trade Commission.

ACTION: Notice of Investigation and Scheduling of a Public Hearing.

SUMMARY: Following receipt on November 4, 2020, of a request from the U.S. Trade Representative (USTR), the Commission instituted Investigation No. 332-582, Monitoring of Fresh or Chilled Bell Peppers, under section 332(g) of the Tariff Act of 1930 for the purpose of collecting and analyzing information that would expedite an investigation under section 202(b) of the Trade Act of 1974 (Trade Act) (the U.S. global safeguard law). For purposes of this investigation, the fresh or chilled bell peppers are those provided for in statistical reporting numbers 0709.60.4015, 0709.60.4025, 0709.60.4065, and 0709.60.4085 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: (date of publication in the **Federal Register**): Commencement of monitoring.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be submitted electronically and addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Project Leader Steven LeGrand (202-205-3094 or steven.legrand@usitc.gov) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202-205-3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its website (<https://www.usitc.gov>).

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION: On October 6, 2020, the Florida Fruit and Vegetable Association, and the Florida Farm Bureau requested that U.S. imports of bell peppers be monitored under the perishable agricultural product provisions of section 202(d)(1) of the Trade Act (19 U.S.C. 2252(d)(1)). In response to that request, the USTR determined that imports of bell peppers satisfy the requirements of section 202(d)(1)(A) of the Trade Act.

Accordingly, in accordance with section 202(d)(1)(B) of the Trade Act, the USTR requested, under section 332(g) of the Tariff Act of 1930, that the Commission monitor and investigate imports of fresh or chilled bell peppers, provided for in statistical reporting numbers 0709.60.4015, 0709.60.4025, 0709.60.4065, and 0709.60.4085 of the HTS. He further requested that the monitoring and investigation include the collection and analysis of information that would expedite an investigation under section 202(b) of the Trade Act. He further stated that the product in question consists of all imports that fall within the product description under the above HTS statistical reporting numbers.

Section 202(d)(1)(C) of the Trade Act provides procedures under which domestic producers of a perishable agricultural product may, in a petition filed under section 202(a) of the Trade Act, request provisional relief. Under those procedures, if the Commission has monitored imports of the article for at least 90 days, the domestic industry may, in such a petition, request a preliminary determination and provisional relief pending completion of a full Commission investigation. Should that occur, the Commission would have 21 days, from the day on which the request was received, to make a preliminary injury determination, and if in the affirmative, to recommend provisional relief to the President.

Public Hearing: No public hearing is planned at this time in connection with this investigation. However, should a public hearing or conference be scheduled, the Commission will publish a notice in the **Federal Register** and post information about the hearing on the Commission's website at (https://usitc.gov/research_and_analysis/what_we_are_working_on.htm). Once on that web page, scroll down to the entry for Investigation No. 332-582, Monitoring of Fresh or Chilled Bell Peppers, and

click on the link to “hearing instructions.”

Written Submissions: Interested parties are invited to file written submissions concerning this investigation. The Commission is particularly interested in receiving information about imports, principal source countries, and impact of the imports on the domestic industry producing the like or directly competitive product. The Commission is also interested in receiving information about the condition of the domestic industry, including with respect to production, employment, profits and losses, and other factors set out in section 202(c) of the Trade Act. To the extent practical, data and information should include the period 2016–2020 and any subsequent period.

All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., January 15, 2021. All written submissions must conform to the provisions of section 201.8 of the Commission’s Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by *85 FR 15798* (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission’s Handbook on Filing Procedures.

Confidential Business Information. Any submissions that contain confidential business information (CBI) must also conform to the requirements of section 201.6 of the Commission’s Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the “confidential” or “non-confidential” version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

Limited Disclosure of CBI. Should a petition be filed under section 202(a) of the Trade Act and an investigation be instituted under section 202(b) of the Trade Act with respect to the products covered by this investigation, the

Secretary will make some or all of the CBI obtained in this monitoring investigation available, pursuant to § 206.17 of the Commission’s rules, to authorized applicants under an administrative protective order (APO) issued in that investigation in accordance with the procedures set forth in section 206.17 of the rules.

The Commission may also include some or all CBI submitted in this investigation in the report it sends to the President and the U.S. Trade Representative in an investigation conducted under section 202(b) or in a related investigation. The Commission will not otherwise disclose information which it considers to be CBI unless the party submitting the information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. See 19 U.S.C. 2252(a)(8) and 19 U.S.C. 1332(g).

Authority: This investigation is being conducted under authority of section 202(d)(1)(B) of the Trade Act and section 332(g) of the Tariff Act of 1930.

By order of the Commission.
Issued: December 2, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–26858 Filed 12–4–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–581]

Monitoring of Fresh or Chilled Strawberries

AGENCY: International Trade Commission.

ACTION: Notice of investigation and scheduling of a public hearing.

SUMMARY: Following receipt on November 4, 2020, of a request from the U.S. Trade Representative (USTR), the Commission instituted Investigation No. 332–581, Monitoring of Fresh or Chilled Strawberries, under the Tariff Act of 1930 for the purpose collecting and analyzing information that would expedite an investigation under the Trade Act of 1974 (the U.S. global safeguard law). For purposes of this investigation, the fresh or chilled strawberries are those provided for in subheading 0810.10 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: December 7, 2020; Commencement of monitoring.

ADDRESSES: All Commission offices, including the Commission’s hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be submitted electronically and addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Project Leader Steven LeGrand (202–205–3094 or steven.legrand@usitc.gov) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission’s Office of the General Counsel (202–205–3091 or william.gearhart@usitc.gov). The media should contact Margaret O’Laughlin, Office of External Relations (202–205–1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission’s TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (<https://www.usitc.gov>).

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: On October 6, 2020, the Florida Fruit and Vegetable Association, the Florida Strawberry Growers Association, and the Florida Farm Bureau requested that U.S. imports of strawberries be monitored under the perishable agricultural product provisions of section 202(d)(1) of the Trade Act (19 U.S.C. 2252(d)(1)). In response to that request, the USTR determined that imports of strawberries satisfy the requirements of section 202(d)(1)(A) of the Trade Act.

Accordingly, in accordance with section 202(d)(1)(B) of the Trade Act, the USTR requested, under section 332(g) of the Tariff Act of 1930, that the Commission monitor and investigate imports of fresh or chilled strawberries, provided for in subheading 0810.10 of the HTS. He further requested that the monitoring and investigation include the collection and analysis of information that would expedite an investigation under section 202(b) of the Trade Act. He further stated that the product in question consists of all imports that fall within the product

description under the above HTS subheading.

Section 202(d)(1)(C) of the Trade Act provides procedures under which domestic producers of a perishable agricultural product may, in a petition filed under section 202(a) of the Trade Act, request provisional relief. Under those procedures, if the Commission has monitored imports of the article for at least 90 days, the domestic industry may, in such a petition, request a preliminary determination and provisional relief pending completion of a full Commission investigation. Should that occur, the Commission would have 21 days, from the day on which the request was received, to make a preliminary injury determination, and if in the affirmative, to recommend provisional relief to the President.

Public Hearing: No public hearing is planned at this time in connection with this investigation. However, should a public hearing or conference be scheduled, the Commission will publish a notice in the **Federal Register** and post information about the hearing on the Commission's website at (https://usitc.gov/research_and_analysis/what_we_are_working_on.htm). Once on that web page, scroll down to the entry for Investigation No. 332–581, Monitoring of Fresh or Chilled Strawberries, and click on the link to “hearing instructions.”

Written Submissions: Interested parties are invited to file written submissions concerning this investigation. The Commission is particularly interested in receiving information about imports, principal source countries, and impact of the imports on the domestic industry producing the like or directly competitive product. The Commission is also interested in receiving information about the condition of the domestic industry, including with respect to production, employment, profits and losses, and other factors set out in section 202(c) of the Trade Act. To the extent practical, data and information should include the period 2016–2020 and any subsequent period.

All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., January 15, 2021. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by *85 FR 15798* (March 19, 2020).

Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's

Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

Confidential Business Information.

Any submissions that contain confidential business information (CBI) must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the “confidential” or “non-confidential” version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

Limited Disclosure of CBI. Should a petition be filed under section 202(a) of the Trade Act and an investigation be instituted under section 202(b) of the Trade Act with respect to the products covered by this investigation, the Secretary will make some or all of the CBI obtained in this monitoring investigation available, pursuant to § 206.17 of the Commission's rules, to authorized applicants under an administrative protective order (APO) issued in that investigation in accordance with the procedures set forth in section 206.17 of the rules.

The Commission may also include some or all CBI submitted in this investigation in the report it sends to the President and the U.S. Trade Representative in an investigation conducted under section 202(b) or in a related investigation. The Commission will not otherwise disclose information which it considers to be CBI unless the party submitting the information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. See 19 U.S.C. 2252(a)(8) and 19 U.S.C. 1332(g).

Authority: This investigation is being conducted under authority of section 202(d)(1)(B) of the Trade Act and section 332(g) of the Tariff Act of 1930.

By order of the Commission.

Issued: December 2, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–26857 Filed 12–4–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Gabapentin Immunoassay Kits and Test Strips, Components Thereof, and Methods Therefor, DN 3511*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of ARK Diagnostics, Inc. on December 2, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain gabapentin immunoassay kits and test strips, components thereof, and methods

therefor. The complaint names as respondents: Hangzhou AllTest Biotech Co., Ltd. of China; Shanghai Chemtron Biotech Co., Ltd. of China; Chemtron Biotech Co., Ltd. of San Diego, CA; Zhejiang Orient Gene Biotech Co., Ltd. of China; Healgen Scientific, LLC of Houston, TX; Kappa City Biotech, SAS of France; 12PanelMedical, Inc. of Sarasota, FL; Acro Biotech, Inc. of Rancho Cucamonga, CA; AlcoPro, Inc. of Knoxville, TN; American Screening, LLC of Shreveport, LA; Confirm Biosciences, Inc. of San Diego, CA; Mercedex Medical, LLC of Lakewood Ranch, FL; TransMed Co., LLC of Alpharetta, GA; and Transmetron, Inc. of Salt Lake City, UT. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days

after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3511") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5

U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 2, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-26861 Filed 12-4-20; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the Defense Production Act of 1950

AGENCY: Antitrust Division, U.S. Department of Justice.

ACTION: Notice of review of plan of action.

SUMMARY: Notice is hereby given pursuant to section 708 of the Defense Production Act of 1950 ("DPA"), that the Assistant Attorney General finds, with respect to the Plan of Action to Establish a National Strategy for the Manufacture, Allocation and Distribution of Personal Protective Equipment (PPE) to Respond to COVID-19 ("Plan of Action") proposed by the Federal Emergency Management Agency ("FEMA"), that the purposes of section 708(c)(1) of the DPA may not reasonably be achieved through a plan of action having less anticompetitive effects or without any plan of action. Given this finding, the proposed Plan of Action may become effective following the publication of this notice.

SUPPLEMENTARY INFORMATION: Under the DPA, FEMA may enter into plans with representatives of private industry for the purpose of improving the efficiency with which private firms contribute to the national defense when conditions exist that may pose a direct threat to the national defense or its preparedness. Such arrangements are generally known as "voluntary agreements." Participants in an existing voluntary agreement may adopt documented methods, known as

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

“plans of action,” to implement that voluntary agreement. A defense to actions brought under the antitrust laws is available to each participant acting within the scope of a voluntary agreement and plan of action that has come into force under the DPA.

The DPA requires that each proposed plan of action be reviewed by the Attorney General prior to becoming effective. If, after consulting with the Chairman of the Federal Trade Commission, the Attorney General finds that the purposes of the DPA’s plans of action provision “may not reasonably be achieved through a . . . plan of action having less anticompetitive effects or without any . . . plan of action,” the plan of action may become effective. 50 U.S.C. 4558(f)(1)(B). All functions which the Attorney General is required or authorized to perform by section 708 of the DPA have been delegated to the Assistant Attorney General, Antitrust Division. 28 CFR. 0.40(l).

On August 17, 2020, the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic (“Voluntary Agreement”) became effective. The proposed Plan of Action contains documented methods to implement the Voluntary Agreement by creating a mechanism to immediately meet exigent PPE requests anywhere in the Nation, and to ensure that actions to support PPE stockpiling and reserves do not interfere with immediate requirements that would result in an unacceptable risk to healthcare providers or other potential PPE recipients. This mechanism involves the establishment several Sub-Committees by PPE type, which are designed to foster a close working relationship among FEMA, the Department of Health and Human Services (“HHS”), and participants in the Sub-Committees to address national defense needs through cooperative action under the direction and active supervision of FEMA. The proposed Plan of Action includes terms, conditions and procedures under which participants agree voluntarily to participate in the Sub-Committees. FEMA has certified that the proposed Plan of Action is necessary to provide for the national defense in the event of a pandemic.

FEMA requested that the Assistant Attorney General, Antitrust Division, issue a finding that the proposed Plan of Action satisfies the statutory criteria set forth in 50 U.S.C. 4558(f)(1)(B). The Assistant Attorney General, Antitrust Division, reviewed the proposed Plan of Action and consulted on it with the Chairman of the Federal Trade Commission. On December 2, 2020, by

letter to Peter Gaynor, FEMA Administrator, Makan Delrahim, Assistant Attorney General, Antitrust Division, issued a finding, pursuant to 50 U.S.C. 4558(f)(1)(B), that the purposes of the DPA’s plans of action provision “may not reasonably be achieved through a . . . plan of action having less anticompetitive effects or without any . . . plan of action.”

David G.B. Lawrence,
Chief, Competition Policy & Advocacy Section.

[FR Doc. 2020–26848 Filed 12–4–20; 8:45 am]

BILLING CODE 4410–11–P

EMPLOYMENT AND TRAINING ADMINISTRATION

Federal-State Unemployment Compensation Program: Certifications for 2020 Under the Federal Unemployment Tax Act; Correction

AGENCY: Employment and Training Administration, Labor.
ACTION: Notice; correction.

SUMMARY: The Employment and Training Administration, Labor, published a document in the **Federal Register** of November 6, 2020, concerning the annual certifications under the Federal Unemployment Tax Act. The document contained draft verbiage instead of the final approved verbiage.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of November 6, 2020, in FR Doc. 2020–24650 (85 FR 71101), on page 71101, correct under the **SUMMARY** caption, in paragraph two, column two to read:

Enclosed, pursuant to the requirements of the Federal Unemployment Tax Act, are an original and a copy of two separate certifications regarding state unemployment compensation laws, for the 12-month period ending on October 31, 2020. One certification is for the “normal” federal unemployment tax credit required under the Internal Revenue Code of 1986, and the other certification is for the “additional” tax credit under the Code. Both certifications list all 53 jurisdictions.

In paragraph four, column two, correct to read:

CERTIFICATION OF STATES TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3304(c) OF THE INTERNAL REVENUE CODE OF 1986

Pursuant to Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify to the Secretary of the Treasury the following States (including the District of Columbia, the Commonwealth of Puerto

Rico, and the Virgin Islands), for the 12-month period ending on October 31, 2020. These States’ unemployment compensation laws, which have previously been approved under the Federal Unemployment Tax Act, meet the requirements of Section 3304(c) of the Code;

And in paragraph four, column three, correct to read:

CERTIFICATION OF STATE UNEMPLOYMENT COMPENSATION LAWS TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3303(b)(1) OF THE INTERNAL REVENUE CODE OF 1986

Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify to the Secretary of the Treasury the unemployment compensation laws of the following States (including the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands), for the 12-month period ending on October 31, 2020. These States’ laws have previously been certified under Section 3303(b)(3) of the Code.

John Pallasch,
Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2020–26855 Filed 12–4–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Suspension of Pension Benefits Pursuant to Regulations

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 6, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of

the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202-693-8538 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) governs the circumstances under which pension plans may suspend pension benefit payments to retirees who return to work or to participants who continue to work beyond normal retirement age. This section sets forth the circumstances and conditions under which such benefit payments may be suspended. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 29, 2020 (85 FR 23856).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-EBSA.

Title of Collection: Suspension of Pension Benefits Pursuant to Regulations 29 CFR 2530.203-3.

OMB Control Number: 1210-0048.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 39,457.

Total Estimated Number of Responses: 171,221.

Total Estimated Annual Time Burden: 132,639.

Total Estimated Annual Other Costs Burden: \$ 48,524.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 2, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020-26852 Filed 12-4-20; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act Prohibited Transaction Class Exemption 1981-8, Investment of Plan Assets in Certain Types of Short-Term Investments

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 6, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of

automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202-693-8538 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code (the Code), provide that the Secretary of Labor and the Secretary of Treasury, respectively, may grant exemptions from certain prohibited transaction provisions under ERISA and the Code. Section 408(a) of ERISA authorizes the Secretary of Labor to grant administrative exemptions from the restrictions of section 406 of ERISA while section 4975(c)(2) of the Code authorizes the Secretary of Treasury or his delegate to grant exemptions from the prohibitions of section 4975(c)(1). This class exemption (PTE 81-8), exempts from the prohibited transaction restrictions the investment of plan assets in certain short-term investments in debt obligations issued by certain persons who provide services to the plan or are affiliated with such service providers. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 29, 2020 (85 FR 23856).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-EBSA.

Title of Collection: Employee Retirement Income Security Act Prohibited Transaction Class Exemption 1981-8, Investment of Plan Assets in Certain Types of Short-Term Investments.

OMB Control Number: 1210-0061.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 95,170.

Total Estimated Number of Responses: 475,850.

Total Estimated Annual Time Burden: 118,963.

Total Estimated Annual Other Costs Burden: \$ 114,109.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 2, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–26853 Filed 12–4–20; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

[Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemption 1998–54 Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions

Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 6, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Mara Blumenthal by telephone at 202–693–8538 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code (the Code), provide that the Secretary of Labor and the Secretary of Treasury, respectively, may grant exemptions from certain prohibited transaction provisions under ERISA and the Code. Section 408(a) of ERISA authorizes the Secretary of Labor to grant administrative exemptions from the restrictions of section 406 of ERISA while section 4975(c)(2) of the Code authorizes the Secretary of Treasury or his delegate to grant exemptions from the prohibitions of section 4975(c)(1). The class exemption that is the subject of this submission would permit certain foreign exchange transactions between employee benefit plans and certain banks and broker-dealers that are parties in interest with respect to such plans. For purposes of this exemption, a foreign exchange transaction is the exchange of currency of one nation for the currency of another nation. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 29, 2020 (85 FR 23856).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Prohibited Transaction Class Exemption 1998–54 Relating to Certain Employee Benefit Plan Foreign Exchange Transactions

Executed Pursuant to Standing Instructions.

OMB Control Number: 1210–0111.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 35.

Total Estimated Number of Responses: 420,000.

Total Estimated Annual Time Burden: 4,200.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 2, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–26854 Filed 12–4–20; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0066]

Proposed Extension of Information Collection; Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

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 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. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Testing, Evaluation, and Approval of Mining Products, 30 CFR Subchapter B—parts 6 through 36.

DATES: All comments must be received on or before February 5, 2021.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered. Electronic Submissions: Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments

for docket number MSHA–2020–0038. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.

- 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.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.

- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Roslyn B. Fontaine, Deputy Director, Office of Standards, Regulations, and Variances, MSHA, at MSHA.information.collections@dol.gov (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

MSHA is responsible for the inspection, testing, approval and certification, and quality control of mining equipment and components, materials, instruments, and explosives used in both underground and surface coal, metal, and nonmetal mines. Title 30 Code of Federal Regulations parts 6 through 36 contain procedures and specifications by which manufacturers may apply for and have equipment approved as “permissible” for use in mines.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Testing, Evaluation, and Approval of Mining Products, 30 CFR Subchapter B—parts 6 through 36. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Background documents related to this information collection request are available at <https://regulations.gov> and in DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice from the previous collection of information.

III. Current Actions

This information collection request concerns provisions for Testing, Evaluation, and Approval of Mining Products, 30 CFR Subchapter B—parts 6 through 36. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Revision of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0066.

Affected Public: Business or other for-profit.

Number of Respondents: 130.

Frequency: On occasion.

Number of Responses: 315.

Annual Burden Hours: 3,424 hours.

Annual Respondent or Recordkeeper Cost: \$2,938,557.

MSHA Form: MSHA Form 2000–38, Electrically Operated Mining Equipment U.S. Department of Labor Field Approval Application (Coal Operator).

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

Roslyn B. Fontaine,

Certifying Officer.

[FR Doc. 2020–26774 Filed 12–4–20; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Advertising of Excess Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before February 5, 2021 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6018, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email at PRAComments@NCUA.gov. Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Mackie Malaka at the address above or telephone 703–548–2704.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0180.

Title: Liquidity Contingency Funding Plans, 12 CFR 741.12.

Type of Review: Extension of a currently approved collection.

Abstract: The 2008 financial crisis demonstrated the importance of good liquidity risk management to the safety and soundness of financial institutions. In conjunction with the OCC, FRB, FDIC, and Conference of State Bank Supervisors (CSBS), adopted the

Interagency Policy Statement on Funding and Liquidity Risk Management in March of 2010.

In October 2013, to clarify NCUA's expectation on the Interagency Policy Statement and to reduce the regulatory burden on small credit unions, NCUA codified the requirements for Liquidity and Contingency Funding Plans as § 741.12. The rule establishes a three tier framework for federally insured credit unions, based on asset size. Federally insured credit union with assets under \$50 million must maintain a basic policy, federally insured credit unions with assets of \$50 million and over must maintain a contingency funding plan, and federally insured credit unions with assets over \$250 million must maintain a contingency funding plan and establish a federal liquidity contingency source.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 5,164.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 5,164.

Estimated Burden Hours per Response: 0.82.

Estimated Total Annual Burden Hours: 4,247.

Reason for Change: Adjustments are attributed to current updated data since the last previous submission.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on December 1, 2020.

Dated: December 1, 2020.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2020-26769 Filed 12-4-20; 8:45 am]

BILLING CODE 7535-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-528, 50-529, 50-530, and 72-044; NRC-2020-0260]

In the Matter of Arizona Public Service Company; Palo Verde Nuclear Generating Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued a Confirmatory Order to Arizona Public Service Company (APS) on November 17, 2020. The purpose of the Confirmatory Order was to document commitments made as part of a settlement agreement between the NRC and APS to address the licensee's failure to: Perform a written evaluation for a change to the NAC MAGNASTOR spent fuel dry cask storage system and obtain a license amendment for a change in methodology for performing tip-over calculations, and (2) adequately analyze the consequences of a hypothetical MAGNASTOR CC5 spent fuel cask tip-over accident on the independent spent fuel storage installation pad located at APS' Palo Verde Nuclear Generating Station.

DATES: The Confirmatory Order became effective on November 17, 2020.

ADDRESSES: Please refer to Docket ID NRC-2020-0260 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-2020-0260. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The Confirmatory Order to Arizona Public Service Company is available in ADAMS under Accession No. ML20323A035.

- *Attention:* The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at PDR.Resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Peter Jayroe, Region IV, U.S. Nuclear Regulatory Commission, Arlington, TX 76011-4511; telephone: 817-200-1174, email: peter.jayroe@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: December 2, 2020.

For the Nuclear Regulatory Commission.

Scott A. Morris,

Regional Administrator, NRC Region IV.

Attached—Confirmatory Order

United States of America

Nuclear Regulatory Commission

In the Matter of: Arizona Public Service Company Palo Verde Nuclear Generating Station.

Docket Nos. 50-528, 50-529, 50-530, 72-044

License Nos. NPF-41, NPF-51, NPF-74 EA-20-054

Confirmatory Order Modifying License (Effective Upon Issuance)

I

Arizona Public Service Company (APS or Licensee) is the holder of Renewed Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 issued on April 21, 2011, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Production and Utilization Facilities." The license authorizes the operation of Palo Verde Nuclear Generating Station (facility) in accordance with conditions specified therein. The facility is located on the Licensee's site in Tonopah, Arizona.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on September 16, 2020.

II

On July 6, 2020, the NRC issued Inspection Report 05000528/2020010, 05000529/2020010, 05000530/2020010, and 07200044/2020001 to APS which documented the identification of two apparent violations that were being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The apparent

violations included: (1) An apparent violation of 10 CFR 72.48(c)(2)(viii) for the failure to perform a written evaluation for a change to the NAC MAGNASTOR dry cask storage system and obtain a license amendment for a change in methodology for performing tip-over calculations; and (2) an apparent violation of 10 CFR 72.146(a) for the failure to adequately analyze the consequences of a hypothetical MAGNASTOR CC5 spent fuel cask tip-over accident on the independent spent fuel storage installation pad.

By letter dated July 6, 2020, the NRC notified APS of the results of the inspection with an opportunity to: (1) Provide a response in writing, (2) attend a predecisional enforcement conference; or (3) to participate in an ADR mediation session in an effort to resolve these concerns.

In response to the NRC's offer, APS requested the use of the NRC's ADR process to resolve differences it had with the NRC. On September 16, 2020, the NRC and APS met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, APS and the NRC reached a preliminary settlement agreement. The elements of the agreement include the following:

APS acknowledged that it: (1) Failed to perform a written evaluation for a change to the NAC MAGNASTOR dry cask storage system and obtain a license amendment for a change in methodology for performing tip-over calculations; and (2) failed to adequately analyze the consequences of a hypothetical MAGNASTOR CC5 spent fuel cask tip over accident on the Independent Spent Fuel Storage Installation (ISFSI) pad.

Corrective actions already implemented by APS included:

A. Prior to loading fuel in the first MAGNASTOR cask at the Palo Verde Nuclear Generating Station (Palo Verde), APS directed NAC to perform a new tip-over analysis of the Palo Verde plant specific vertical concrete MAGNASTOR CC5 cask on the Palo Verde ISFSI pad using the NAC final safety analysis report (FSAR) described method of evaluation, LS-DYNA.

B. On February 28, 2020, APS revised 10 CFR 72.48 screening 72.48 S-20-001 to no longer accept the linear scaling method that was originally done for the MAGNASTOR tip-over analysis. The revision of the screening was done to review and accept the tip-over analysis using the NAC FSAR-described method of evaluation, LS-DYNA.

C. On February 28, 2020, APS revised the Palo Verde ISFSI 10 CFR 72.212 Evaluation Report for the MAGNASTOR System to incorporate the revised 10 CFR 72.48 screening that accepted the tip-over analysis using the NAC FSAR-described method of evaluation, LS-DYNA.

D. APS completed a Level 1 Root Cause Analysis that was approved by the Palo Verde Corrective Action Review Board. The root cause analysis addressed the failure to identify a change in a MAGNASTOR FSAR required methodology resulting in APS not complying with 10 CFR 72.48(c)(2)(viii) and 10 CFR 72.146(a).

E. As part of the root cause analysis, APS performed a review of the tip-over analysis for the UMS dry cask system, used at Palo Verde prior to MAGNASTOR, and confirmed that the UMS tip-over analysis was performed using LS-DYNA as required by the NAC FSAR.

F. As part of the root cause analysis, APS performed an extent of condition review of the 10 CFR 72.48 and 10 CFR 50.59 screenings and evaluations performed over the last 5 years. Of the over 600 screenings and evaluations reviewed, APS identified three items of interest that required additional evaluation and were entered into the APS corrective action program.

Additional commitments made in the preliminary settlement agreement, as signed by both parties, consist of the following:

Communications

A. Within 2 months of the issuance date of the Confirmatory Order, APS will develop a communication that will include: A summary of the ISFSI event that resulted in the Confirmatory Order, the root and contributing causes, the corrective actions from the root cause evaluation, and the additional corrective actions from the Confirmatory Order, and APS will submit the proposed communication to the NRC for its review. The NRC will provide any comments to APS on the communication within 1 month from the date of the submittal. APS will consider the NRC's comments and incorporate those comments that APS agrees are appropriate.

B. Within 4 months of the issuance date of the Confirmatory Order, APS will issue the Condition A communication as a stand-alone communication from the Chief Nuclear Officer to all qualified personnel in the development, review, and approval of 10 CFR 50.59/72.48 "Changes, test, and experiments" documents. APS will retain a copy of the communication presented and verifiable evidence of the personnel receiving the communication. APS will document the reason for any person not obtaining the communication and the additional efforts used to provide the communication.

C. Within 6 months of the issuance date of the Confirmatory Order, APS will develop a presentation and will submit the proposed presentation to the NRC for its review. The NRC will provide any comments to APS on the presentation within 1 month from the date of the submittal. APS will consider the NRC's comments and incorporate those comments that APS agrees are appropriate. The presentation will:

1. Include a summary of the ISFSI event that resulted in the Confirmatory Order, the root and contributing causes, the corrective actions from the root cause evaluation, additional corrective actions from the Confirmatory Order, and a discussion on what a Methodology is and what are input parameters.

2. Emphasize a General Licensee's requirement to adequately review a vendor's 10 CFR 72.48 analysis through its 10 CFR 50.59/72.48 program for acceptance prior to being implemented at the General Licensee's site.

D. Within 15 months of the issuance date of the Confirmatory Order, APS will deliver the presentation to: (1) The INPO Engineering VP Forum, (2) the NEI Used Fuel Conference, and (3) the NEI High Level Waste Working Group (subject to acceptance of the forum or conference organizing committee) as allowed by current COVID-19 considerations.

Training

E. Within 6 months of the issuance date of the Confirmatory Order, APS will develop a refresher training on 10 CFR 50.59/72.48 requirements and processes and will submit the proposed training to the NRC for its review. The NRC will provide any comments to APS on the proposed training within 1 month from the date of the submittal. APS will consider the NRC's comments and incorporate those comments that APS agrees are appropriate.

F. Within 9 months of the issuance date of the Confirmatory Order, APS

will provide the training to all qualified personnel in the development, review, and approval of 10 CFR 50.59/72.48 changes. APS will continue to provide the refresher training at intervals not to exceed 15 months until December 31, 2024. APS will retain a copy of the training and verifiable evidence of the personnel receiving the training. APS will document the reason for any person not obtaining the training and the additional efforts used to provide the training.

Reviews

G. Within 4 months of the issuance date of the Confirmatory Order, APS will create a challenge review board consisting of three 10 CFR 50.59 program single point of contact (SPOC) members who will review 10 CFR 72.48 screenings and evaluations prior to the change implementation until December 31, 2024. By March 31 of the calendar year following the Condition G reviews, APS will send a copy of the previous calendar reviews and a copy of any additional corrective actions developed from the reviews to the NRC.

H. APS will utilize a design review board to review NAC's design changes with experienced qualified 10 CFR 50.59/72.48 individuals on both NAC MAGNASTOR and NAC UMS systems, applicable to APS, prior to all loading campaigns through December 31, 2024. By March 31 of the calendar year following the Condition H reviews, APS will send a copy of the previous calendar year reviews and a copy of any additional corrective actions developed from the reviews to the NRC.

Training Assessment

I. Within 12 months of the issuance date of the Confirmatory Order, APS will perform a training needs analysis to determine what training should be provided to engineering personnel relative to software quality assurance. The training needs analysis will consider procedures and processes related to the APS software quality assurance program and aspects of the Spent Fuel Project Office Interim Staff Guidance—21 (ISG—21), "Use of Computational Modeling Software," NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML061080669. APS will send the results of the training needs analysis and proposed training to the NRC for its review. The NRC will provide any comments to APS on the training within 1 month from the date of the submittal. APS will consider the NRC's comments and incorporate those comments that APS agrees are appropriate.

J. Within 24 months of the issuance date of the Confirmatory Order, APS will provide the training resulting from the training needs analysis discussed in Paragraph I to qualified personnel in the development, review, and approval of 10 CFR 50.59/72.48 changes.

Effectiveness Reviews

K. By December 31 of calendar years 2021 and 2023, APS will perform an effectiveness review of the implemented root cause evaluation corrective actions, and actions associated with the Confirmatory Order. The effectiveness review will include lessons learned from each action implementation or completion, new operating experience since issuance of the Confirmatory Order, and training feedback associated with 10 CFR 50.59/72.48 which occurred during the effectiveness review period. APS will modify its corrective actions, as needed and consistent with this Confirmatory Order, based on the results of the effectiveness review. By March 31 of each year following the effectiveness review, APS will send a copy of the effectiveness review and a copy of any additional corrective actions developed from the effectiveness review to the NRC.

Administrative Items

L. Until December 31, 2026, APS will retain a copy of all documentation created during the implementation of the Confirmatory Order Conditions.

M. Documents that are required to be sent to the NRC as a result of the Confirmatory Order Conditions will be sent to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 1600 E Lamar Blvd., Arlington, TX 76011-4511 and emailed to R4Enforcement@nrc.gov.

N. In consideration of the Conditions delineated above, the NRC agrees that the issuance of this Confirmatory Order will not be considered as escalated enforcement. However, for any future escalated enforcement actions involving 10 CFR 72.48 or 10 CFR 72.146, the NRC will consider this Confirmatory Order for the civil penalty assessment purposes as discussed in the NRC Enforcement Policy.

O. In consideration of the Conditions delineated above, the NRC agrees not to issue a notice of violation and not impose a civil penalty for the apparent violations discussed in the NRC inspection report to APS dated July 6, 2020.

P. In the event of the transfer of the license of APS to another entity, the terms and conditions set forth hereunder shall continue to apply to the

new entity and accordingly survive any transfer of ownership or license.

Q. The NRC and APS agree that the above elements will be incorporated into a Confirmatory Order.

Based on the completed actions described above, and the commitments described in Section V below, the NRC agrees to not pursue any further enforcement action based on the apparent violations identified in the NRC's July 6, 2020, letter.

On November 5, 2020, APS consented to issuing this Confirmatory Order with the commitments, as described in Section V below. APS further agreed that this Confirmatory Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that it has waived its right to a hearing.

IV

I find that APS's actions completed, as described in Section III above, combined with the commitments as set forth in Section V are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that APS's commitments be confirmed by this Confirmatory Order. Based on the above and APS's consent, this Confirmatory Order is effective upon issuance.

V

Accordingly, pursuant to Sections 103, 161b., 161i., 161o., 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered, effective upon issuance, that license Nos. NPF-41, NPF-51, and NPF-74 are modified as follows:*

Communications

A. Within 2 months of the issuance date of the Confirmatory Order, APS will develop a communication that will include: A summary of the ISFSI event that resulted in the Confirmatory Order, the root and contributing causes, the corrective actions from the root cause evaluation, and the additional corrective actions from the Confirmatory Order, and APS will submit the proposed communication to the NRC for its review. The NRC will provide any comments to APS on the communication within 1 month from the date of the submittal. APS will consider the NRC's comments and incorporate those comments that APS agrees are appropriate.

B. Within 4 months of the issuance date of the Confirmatory Order, APS will issue the Condition A communication as a stand-alone communication from the Chief Nuclear Officer to all qualified personnel in the development, review, and approval of 10 CFR 50.59/72.48 “Changes, test, and experiments” documents. APS will retain a copy of the communication presented and verifiable evidence of the personnel receiving the communication. APS will document the reason for any person not obtaining the communication and the additional efforts used to provide the communication.

C. Within 6 months of the issuance date of the Confirmatory Order, APS will develop a presentation and will submit the proposed presentation to the NRC for its review. The NRC will provide any comments to APS on the presentation within 1 month from the date of the submittal. APS will consider the NRC’s comments and incorporate those comments that APS agrees are appropriate. The presentation will:

1. Include a summary of the ISFSI event that resulted in the Confirmatory Order, the root and contributing causes, the corrective actions from the root cause evaluation, additional corrective actions from the Confirmatory Order, and a discussion on what a Methodology is and what are input parameters.

2. Emphasize a General Licensee’s requirement to adequately review a vendor’s 10 CFR 72.48 analysis through its 10 CFR 50.59/72.48 program for acceptance prior to being implemented at the General Licensee’s site.

D. Within 15 months of the issuance date of the Confirmatory Order, APS will deliver the presentation developed in Condition C to: (1) The INPO Engineering VP Forum, (2) the NEI Used Fuel Conference, and (3) the NEI High Level Waste Working Group (subject to acceptance of the forum or conference organizing committee) as allowed by current COVID–19 considerations.

Training

E. Within 6 months of the issuance date of the Confirmatory Order, APS will develop a Systematic Approach to Training refresher training on 10 CFR 50.59/72.48 requirements and processes and will submit proposed training to the NRC for its review. The NRC will provide any comments to APS on the training within 1 month from the date of the submittal. APS will consider the NRC’s comments and incorporate those comments that APS agrees are appropriate.

F. Within 9 months of the issuance date of the Confirmatory Order, APS will provide the training developed in Condition E above to all qualified personnel in the development, review, and approval of 10 CFR 50.59/72.48 changes. APS will continue to provide the refresher training at intervals not to exceed 15 months until December 31, 2024. APS will retain a copy of the training and verifiable evidence of the personnel receiving the training. APS will document the reason for any person not obtaining the training and the additional efforts used to provide the training.

Reviews

G. Within 4 months of the issuance date of the Confirmatory Order and until December 31, 2024, APS will create a challenge review board consisting of three 10 CFR 50.59 program single point of contact (SPOC) members who will review 10 CFR 72.48 screenings and evaluations prior to the implementation of a design change. By March 31 of the calendar year following the Condition G reviews, APS will send a copy of the previous calendar year reviews and a copy of any additional corrective actions developed from the reviews to the NRC.

H. Within 4 months of the issuance date of the Confirmatory Order and until December 31, 2024, APS will utilize a design review board to review NAC’s design changes with experienced, qualified 10 CFR 50.59/72.48 individuals on both NAC MAGNASTOR and NAC UMS systems applicable to APS prior to all loading campaigns. By March 31 of the calendar year following the Condition H reviews, APS will send a copy of the previous calendar year reviews and a copy of any additional corrective actions developed from the reviews to the NRC.

Training Assessment

I. Within 12 months of the issuance date of the Confirmatory Order, APS will perform a training needs analysis to determine what training should be provided to engineering personnel relative to software quality assurance. The training needs analysis will consider procedures and processes related to the APS software quality assurance program and aspects of NUREG–2215, “Standard Review Plan for Spent Fuel Dry Storage Systems and Facilities,” Appendix 4A, “Computational Modeling Software Technical Review Guidance,” NRC’s Agencywide Documents Access and Management System (ADAMS) Accession No. ML20121A190. APS will send the results of the training needs

analysis and proposed training to the NRC for its review. The NRC will provide any comments to APS on the training within 1 month from the date of the submittal. APS will consider the NRC’s comments and incorporate those comments that APS agrees are appropriate.

J. Within 24 months of the issuance date of the Confirmatory Order, APS will provide the training resulting from the training needs analysis discussed in Condition I to qualified personnel in the development, review, and approval of 10 CFR 50.59/72.48 changes.

Effectiveness Reviews

K. By December 31 of calendar years 2021 and 2023, APS will perform an effectiveness review of the implemented root cause evaluation corrective actions, and actions associated with the Confirmatory Order. The effectiveness review will include lessons learned from each action implementation or completion, new operating experience since issuance of the Confirmatory Order, and training feedback associated with 10 CFR 50.59/72.48 which occurred during the effectiveness review period. APS will modify its corrective actions, as needed and consistent with the Confirmatory Order, based on the results of the effectiveness review. By March 31 of each year following the effectiveness review, APS will send a copy of the effectiveness review and a copy of any additional corrective actions developed from the effectiveness review to the NRC.

Administrative Items

L. Until December 31, 2026, APS will retain a copy of all documentation created during the implementation of the Confirmatory Order Conditions.

M. Documents that are required to be sent to the NRC as a result of the Confirmatory Order Conditions will be sent to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 1600 E Lamar Blvd., Arlington, TX 76011–4511 and emailed to R4Enforcement@nrc.gov.

N. In consideration of the Conditions delineated above, the NRC agrees that the issuance of this Confirmatory Order will not be considered as escalated enforcement. However, for any future escalated enforcement actions involving 10 CFR 72.48 or 10 CFR 72.146, the NRC will consider this Confirmatory Order for the civil penalty assessment purposes as discussed in the NRC Enforcement Policy.

O. In consideration of the Conditions delineated above, the NRC agrees not to issue a notice of violation and not

impose a civil penalty for the apparent violations discussed in the NRC inspection report to APS dated July 6, 2020.

In the event of the transfer of the license of APS to another entity, the terms and conditions set forth hereunder shall continue to apply to the new entity and accordingly survive any transfer of ownership or license. The Regional Administrator, Region IV, may, in writing, relax, rescind, or withdraw any of the above conditions upon demonstration by APS or its successors of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than APS, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). 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. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

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 hearing in this 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 <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at <http://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 time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice 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 so that they can 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 by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an Order of the Commission or 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. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. 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 are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

If a person (other than APS) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.
/RA/

Scott A. Morris,

Regional Administrator, NRC Region IV.

Dated this 17th day of November 2020.

[FR Doc. 2020-26846 Filed 12-4-20; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2018-0137]

Licensee Actions to Address Nonconservative Technical Specifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Regulatory Guide (RG) 1.239, "Licensee Actions to Address Nonconservative Technical Specifications." This RG endorses the guidance in NEI 15-03, Revision 3, "Licensee Actions to Address Nonconservative Technical Specifications," as a method acceptable to the NRC staff for licensee actions to

address nonconservative technical specifications.

DATES: RG 1.239 is available on December 7, 2020.

ADDRESSES: Please refer to Docket ID NRC-2018-0137 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-2018-0137. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individuals 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.

- **Attention:** The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at PDR.Resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

RG 1.239 and the regulatory analysis may be found in ADAMS under Accession Nos. ML20294A510 and ML18086A685, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Shawn Williams, Office of Nuclear Reactor Regulation, telephone: 301-415-1009, email: Shawn.Williams@nrc.gov and Robert Roche-Rivera, Office of Nuclear Regulatory Research, telephone: 301-415-8113, email: Robert.Roche-Rivera@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a new guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

RG 1.239 was issued with a temporary identification of Draft Regulatory Guide, DG-1351 and related regulatory analysis. This RG provides guidance for licensee compliance with the technical specification requirements in section 50.36 of title 10 of the *Code of Federal Regulations* (10 CFR), "Technical specifications," the reporting requirements in 10 CFR 50.72, "Immediate notification requirements for operating nuclear power reactors" and 10 CFR 50.73, "Licensee event report system," and the quality assurance requirements in Criterion XVI of 10 CFR part 50, appendix B, "Corrective Action". This RG endorses NEI 15-03, Revision 3.

With the issuance of RG 1.239, the NRC is withdrawing Administrative Letter (AL) 98-10, "Dispositioning of Technical Specifications That Are Insufficient to Assure Plant Safety." The information in AL 98-10 is encompassed in RG 1.239.

II. Additional Information

The NRC published a notice of the availability of DG-1351 in the **Federal Register** on July 5, 2018 (83 FR 31429) for a 60-day public comment period, and it proposed to endorse NEI 15-03, Revision 2, with exceptions and clarifications. The public comment period closed on September 4, 2018. Public comments on DG-1351 and the staff responses to the public comments are available in ADAMS under Accession No. ML19267A108.

On October 17, 2019, the NRC staff held a public meeting to discuss the staff's disposition of public comments on DG-1351. Subsequently, by letter dated April 9, 2020, the NEI submitted Revision 3 of NEI 15-03 to address the exceptions and clarifications in DG-1351. The NRC review of the April 9, 2020, submittal determined that NEI 15-03, as revised, is acceptable and addresses the exceptions and clarifications in DG-1351. As a result, the NRC revised DG-1351 to remove the exceptions and clarifications and published a notice of the availability of DG-1351, Revision 1 in the **Federal**

Register on August 26, 2020 (85 FR 52643) for a 30-day public comment period. The public comment period closed on September 25, 2020. Two public comment submissions were received by the end of the public comment period. These comment submissions expressed agreement with the DG-1351, Revision 1 and recommended final issuance of the RG.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found

it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

RG 1.239 provides guidance on licensee actions to address nonconservative technical specifications. Issuance of RG 1.239 does not constitute backfitting as defined in 10 CFR 50.109, "Backfitting," and as described in NRC Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests;" constitute forward fitting as that term is

defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, "Licenses, Certificates, and Approvals for Nuclear Power Plants." As explained in this RG, applicants and licensees are not required to comply with the positions set forth in this RG.

V. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS under the respective ADAMS Accession numbers identified in the table.

Document	ADAMS accession No.
RG 1.239, Licensee Actions to Address Nonconservative Technical Specifications.	ML20294A510
DG-1351, Dispositioning of Technical Specifications that are Insufficient to Ensure Plant Safety, July 2018.	ML18086A690
Regulatory Analysis, Draft Regulatory Guide, DG-1351.	ML18086A685
DG-1351, Revision 1, Licensee Actions to Address Nonconservative Technical Specifications, August 2020.	ML20142A489
NEI 15-03, Revision 2, Licensee Actions to Address Nonconservative Technical Specifications, September 2017.	ML17276A642
Summary of October 17, 2019, Meeting with NEI Regarding DG-1351.	ML19298B110
Draft NRC Staff Responses to Public Comments on DG-1351.	ML19267A108
NEI 15-03, Revision 3, Licensee Actions to Address Nonconservative Technical Specifications, March 2020.	ML20100G899 (Package)
Comment (1) of Brian Mann on Licensee Actions to Address Nonconservative Technical Specifications.	ML20247J650
Comment (2) of Timothy Riti on behalf of Nuclear Energy Institute (NEI) on Licensee Actions to Address Nonconservative Technical Specifications.	ML20255A302
Management Directive 8.4, Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests.	ML18093B087

Dated: December 2, 2020.
For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2020-26844 Filed 12-4-20; 8:45 am]

BILLING CODE 7590-01-P

facilities specified in the AEA, and such other duties as the Commission may request.

FOR FURTHER INFORMATION CONTACT:

Russell E. Chazell, Office of the Secretary, NRC, Washington, DC 20555; telephone: (301) 415-7469 or at Russell.Chazell@nrc.gov.

SUPPLEMENTARY INFORMATION: The AEA as amended by Public Law 100-456 also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS.

Membership on the Committee includes individuals experienced in reactor operations, management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; materials science; and mechanical, civil, and electrical engineering.

The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 2, 2022, is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance

with the Federal Advisory Committee Act.

Dated: December 2, 2020.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2020-26804 Filed 12-4-20; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Charter Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the charter of the advisory committee on reactor safeguards.

SUMMARY: The Advisory Committee on Reactor Safeguards (ACRS) was established by the Atomic Energy Act (AEA) of 1954, as amended. Its purpose is to provide advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-289 and 50-320; NRC-2020-0217]

Exelon Generation Company, LLC; Three Mile Island Nuclear Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued exemptions in response to a request from Exelon Generation Company, LLC (Exelon, the licensee) regarding certain emergency planning (EP) requirements. The exemptions eliminate the

requirements to maintain an offsite radiological emergency preparedness plan and reduce the scope of onsite EP activities at the Three Mile Island Nuclear Station, Units 1 and 2 (TMI), based on the reduced risks of accidents that could result in an offsite radiological release at a decommissioning nuclear power reactor.

DATES: The exemptions were issued on December 1, 2020.

ADDRESSES: Please refer to Docket ID NRC-2020-0217 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-2020-0217. Address questions about Docket IDs to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. 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.

- *Attention:* The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at PDR.Resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Theodore Smith, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-6721; email: Theodore.Smith@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemptions are attached.

Dated: December 1, 2020.

For the Nuclear Regulatory Commission.

Bruce Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

Nuclear Regulatory Commission

[Docket Nos. 50-289 and 50-320]

Exelon Generation Company, LLC

Three Mile Island Nuclear Station, Units 1 and 2 Exemptions

I. Background

Exelon Generation Company, LLC (Exelon, the licensee) is the holder of U.S. Nuclear Regulatory Commission (NRC, the Commission) Renewed Facility Operating License No. DPR-50 for Three Mile Island Nuclear Station, Unit 1 (TMI-1). Three Mile Island Nuclear Station, Unit 2 (TMI-2) has a possession-only license and is currently maintained in accordance with the NRC-approved SAFSTOR condition known as post-defueling monitored storage. Exelon maintains the emergency planning responsibilities for TMI-2, which is owned by GPU Nuclear, Inc., through a service agreement. These licenses are subject to the rules, regulations, and orders of the NRC. The licensed facilities consist of permanently shutdown pressurized-water reactors (PWR) located in Dauphin County, Pennsylvania.

By letter dated June 20, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17171A151), Exelon submitted a certification to the NRC that it would permanently cease power operations at TMI-1 on or about September 30, 2019. On September 20, 2019, Exelon permanently ceased power operations at TMI-1. By letter dated September 26, 2019 (ADAMS Accession No. ML19269E480), Exelon certified the permanent removal of fuel from the TMI-1 reactor vessel. In accordance with paragraph 50.82(a)(2) of Title 10 of the Code of Federal Regulations (10 CFR), upon the docketing of these certifications, the license for TMI-1 no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. The facility is still authorized to possess and store irradiated (*i.e.*, spent) nuclear fuel. Spent fuel is currently stored onsite in the TMI-1 spent fuel pool (SFP). A dry cask independent spent fuel storage installation is under construction to store the TMI-1 spent fuel. Since the license for TMI-2 had previously been modified to allow possession but not operation of the facility, the

certifications of permanent cessation of operations and permanent removal of fuel are, by rule, deemed to have been submitted for TMI-2. Spent fuel for TMI-2 has already been removed from the site, though residual contamination and radiological materials exist.

During normal power reactor operations, the forced flow of water through the reactor coolant system removes heat generated by the reactor. The reactor coolant system, operating at high temperatures and pressures, transfers this heat through the steam generator tubes converting non-radioactive feedwater to steam, which then flows to the main turbine generator to produce electricity. Many of the accident scenarios postulated in the updated safety analysis reports for operating power reactors involve failures or malfunctions of systems, which could affect the fuel in the reactor core and, in the most severe postulated accidents, would involve the release of large quantities of fission products. With the permanent cessation of operations and the permanent removal of the fuel from the reactor vessels at TMI, such accidents are no longer possible. The reactor, reactor coolant system, and supporting systems are no longer in operation and have no function related to the storage of the spent fuel. Therefore, emergency planning (EP) provisions for postulated accidents involving failure or malfunction of the reactor, reactor coolant system, or supporting systems are no longer applicable.

The EP requirements of 10 CFR 50.47, "Emergency plans," and Appendix E to 10 CFR part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities," continue to apply to nuclear power reactors that have permanently ceased operation and have permanently removed all fuel from the reactor vessel. There are no explicit regulatory provisions distinguishing EP requirements for a power reactor that is permanently shut down and defueled from those for a reactor that is authorized to operate. To reduce or eliminate EP requirements that are no longer necessary due to the decommissioning status of the facility, Exelon must obtain exemptions from those EP regulations. Only then can Exelon modify the TMI emergency plan to reflect the reduced risk associated with the permanently shutdown and defueled condition of TMI.

II. Request/Action

By letter dated July 1, 2019 (ADAMS Accession No. ML19182A104), Exelon requested exemptions from certain EP requirements in 10 CFR part 50 for TMI.

Specifically, Exelon requested exemptions from certain planning standards in 10 CFR 50.47(b) regarding onsite and offsite radiological emergency preparedness plans for nuclear power reactors; from certain requirements in 10 CFR 50.47(c)(2) for the establishment of plume exposure and ingestion pathway emergency planning zones for nuclear power reactors; and from certain requirements in 10 CFR part 50, Appendix E, Section IV, which establish the elements that make up the content of emergency plans. In letters dated October 9, 2019, and December 10, 2019 (ADAMS Accession Nos. ML19282C285 and ML19344C115, respectively), Exelon provided supplemental information and responses to the NRC staff's requests for additional information concerning the proposed exemptions.

The information provided by Exelon included justifications for each exemption requested. The exemptions requested by Exelon would eliminate the requirements to maintain formal offsite radiological emergency preparedness plans reviewed by the Federal Emergency Management Agency (FEMA) under the requirements of 44 CFR part 350 and would reduce the scope of onsite EP activities at TMI. The licensee stated that the application of all of the standards and requirements in 10 CFR 50.47(b), 10 CFR 50.47(c), and 10 CFR part 50, Appendix E is not needed for adequate emergency response capability, based on the substantially lower onsite and offsite radiological consequences of accidents still possible at the permanently shutdown and defueled facility, as compared to an operating facility. If offsite protective actions were needed for a highly unlikely beyond-design-basis accident that could challenge the safe storage of spent fuel at TMI, provisions exist for offsite agencies to take protective actions using a comprehensive emergency management plan (CEMP) under the National Preparedness System to protect the health and safety of the public. A CEMP in this context, also referred to as an emergency operations plan, is addressed in FEMA's Comprehensive Preparedness Guide 101, "Developing and Maintaining Emergency Operations Plans," which is publicly available at http://www.fema.gov/pdf/about/divisions/npd/CPG_101_V2.pdf. Comprehensive Preparedness Guide 101 is the foundation for State, territorial, Tribal, and local EP in the United States. It promotes a common understanding of the fundamentals of risk-informed planning and decisionmaking and helps

planners at all levels of government in their efforts to develop and maintain viable, all-hazards, all-threats emergency plans. An emergency operations plan is flexible enough for use in all emergencies. It describes how people and property will be protected; details who is responsible for carrying out specific actions; identifies the personnel, equipment, facilities, supplies and other resources available; and outlines how all actions will be coordinated. A CEMP is often referred to as a synonym for "all-hazards planning."

III. Discussion

In accordance with 10 CFR 50.12, "Specific exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things, that the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

As noted previously, the EP regulations contained in 10 CFR 50.47(b) and Appendix E to 10 CFR part 50 apply to both operating and shutdown power reactors. The NRC has consistently acknowledged that the risk of an offsite radiological release at a power reactor that has permanently ceased operations and permanently removed fuel from the reactor vessel is significantly lower, and the types of possible accidents are significantly fewer, than at an operating power reactor. However, the EP regulations do not recognize that once a power reactor permanently ceases operation, the risk of a large radiological release from credible emergency accident scenarios is significantly reduced. The reduced risk for any significant offsite radiological release is based on two factors. One factor is the elimination of accidents applicable only to an operating power reactor, resulting in fewer credible accident scenarios. The second factor is the reduced short-lived radionuclide inventory and decay heat production due to radioactive decay. Due to the permanently defueled status of the reactor, no new spent fuel will be added to the SFP and the radionuclides in the current spent fuel will continue to decay as the spent fuel ages. The

spent fuel will produce less heat due to radioactive decay, increasing the available time to mitigate a loss of water inventory from the SFP. The NRC's NUREG/CR-6451, "A Safety and Regulatory Assessment of Generic BWR [Boiling Water Reactor] and PWR Permanently Shutdown Nuclear Power Plants," dated August 1997 (ADAMS Accession No. ML082260098), and the NRC's NUREG-1738, "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants," dated February 2001 (ADAMS Accession No. ML010430066), confirmed that for permanently shutdown and defueled power reactors that are bounded by the assumptions and conditions in the report, the risk of offsite radiological release is significantly less than for an operating power reactor.

In the past, EP exemptions similar to those requested for TMI have been granted to permanently shutdown and defueled power reactor licensees. However, the exemptions did not relieve the licensees of all EP requirements. Rather, the exemptions allowed the licensees to modify their emergency plans commensurate with the credible site-specific risks that were consistent with a permanently shutdown and defueled status. Specifically, the NRC's approval of these prior exemptions was based on the licensee's demonstration that: (1) The radiological consequences of design-basis accidents would not exceed the limits of the U.S. Environmental Protection Agency (EPA) early phase Protective Action Guides (PAGs) of one roentgen equivalent man at the exclusion area boundary; and (2) in the highly unlikely event of a beyond-design-basis accident resulting in a loss of all modes of heat transfer from the fuel stored in the SFP, there is sufficient time to initiate appropriate mitigating actions, and if needed, for offsite authorities to implement offsite protective actions using a CEMP approach to protect the health and safety of the public.

With respect to design-basis accidents at TMI, the licensee provided an analysis demonstrating that following permanent cessation of power operations at TMI-1, the radiological consequences of the remaining design-basis accidents with potential for offsite radiological release (a fuel handling accident in the Fuel Handling Building, where the SFP is located for TMI-1, and a fire in the Reactor Building with the Reactor Building Purge System in operation for TMI-2) will not exceed the

limits of the EPA PAGs at the exclusion area boundary.

With respect to beyond-design-basis accidents at TMI, the licensee analyzed a drain down of the SFP water that would effectively impede any decay heat removal. The analysis demonstrates that at 488 days (approximately 16 months) after permanent cessation of power operations, there would be 10 hours after the assemblies have been uncovered until the limiting fuel assembly (for decay heat and adiabatic heat-up analysis) reaches 900 degrees Celsius (°C), the temperature used to assess the potential onset of fission product release. The analysis conservatively assumed that the heat-up time starts when the SFP has been completely drained, although it is likely that site personnel will start to respond to an incident when drain down starts. The analysis also does not consider the period of time from the initiating event causing loss of SFP water inventory until cooling is lost.

The NRC reviewed the licensee's justification for the requested exemptions against the criteria in 10 CFR 50.12(a) and determined, as described below, that the criteria in 10 CFR 50.12(a) will be met, and that the exemptions should be granted 488 days after TMI-1 has permanently ceased power operations. An assessment of the Exelon EP exemptions is described in SECY-20-0041, "Request by Exelon Generation Company, LLC for Exemptions from Certain Emergency Planning Requirements for the Three Mile Island Nuclear Station," dated May 5, 2020 (ADAMS Package Accession No. ML19311C762). The Commission approved the NRC staff's recommendation to grant the exemptions in the staff requirements memorandum to SECY-20-0041, dated July 27, 2020 (ADAMS Accession No. ML20209A439). Descriptions of the specific exemptions requested by Exelon and the NRC staff's basis for granting each exemption are provided in SECY-20-0041. The NRC staff's detailed review and technical basis for the approval of the specific EP exemptions requested by Exelon are provided in the NRC staff's safety evaluation associated with this exemption (ADAMS Accession No. ML19311C762).

A. The Exemption Is Authorized by Law

The licensee has proposed exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, Appendix E, Section IV, that would allow Exelon to revise the TMI Emergency Plan to reflect the

permanently shutdown and defueled condition of the facility. As stated above, in accordance with 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemptions are authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

As stated previously, Exelon provided an analysis that shows that the radiological consequences of design-basis accidents will not exceed the limits of the EPA early phase PAGs at the exclusion area boundary. Therefore, formal offsite radiological emergency preparedness plans required under 10 CFR part 50 will no longer be needed for protection of the public beyond the exclusion area boundary, based on the radiological consequences of design-basis accidents still possible at TMI 488 days after TMI-1 has permanently ceased power operations.

Although highly unlikely, there is one postulated beyond-design-basis accident that might result in significant offsite radiological releases. However, NUREG-1738 confirms that the risk of beyond-design-basis accidents is greatly reduced at permanently shutdown and defueled reactors. The NRC staff's analyses in NUREG-1738 conclude that the event sequences important to risk at permanently shutdown and defueled power reactors are limited to large earthquakes and cask drop events. For EP assessments, this is an important difference relative to operating power reactors, where typically a large number of different sequences make significant contributions to risk. As described in NUREG-1738, relaxation of offsite EP requirements in 10 CFR part 50 beyond a few months after shutdown resulted in only a small change in risk. The report further concludes that the change in risk due to relaxation of offsite EP requirements is small because the overall risk is low, and because even under current EP requirements for operating power reactors, EP was judged to have marginal impact on evacuation effectiveness for the severe earthquakes that dominate SFP risk. All other sequences including cask drops (for which offsite radiological emergency preparedness plans are expected to be more effective) are too low in likelihood to have a significant impact on risk.

Therefore, granting exemptions to eliminate the requirements of 10 CFR

part 50 to maintain offsite radiological emergency preparedness plans and to reduce the scope of onsite EP activities will not present an undue risk to the public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The requested exemptions only involve EP requirements under 10 CFR part 50 and will allow Exelon to revise the TMI Emergency Plan to reflect the permanently shutdown and defueled condition of the facility. Physical security measures at TMI are not affected by the requested EP exemptions. The discontinuation of formal offsite radiological emergency preparedness plans and the reduction in scope of the onsite EP activities at TMI will not adversely affect Exelon's ability to physically secure the site or protect special nuclear material. Therefore, the proposed exemptions are consistent with common defense and security.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, Appendix E, Section IV, is to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, to establish plume exposure and ingestion pathway emergency planning zones for nuclear power plants, and to ensure that licensees maintain effective offsite and onsite radiological emergency preparedness plans. The standards and requirements in these regulations were developed by considering the risks associated with operation of a power reactor at its licensed full-power level. These risks include the potential for a reactor accident with offsite radiological dose consequences.

As discussed previously in Section III, because TMI will be permanently shut down and defueled, there will no longer be a risk of a significant offsite radiological release from a design-basis accident exceeding EPA early phase PAGs at the exclusion area boundary and the risk of a significant offsite radiological release from a beyond-design-basis accident is greatly reduced when compared to an operating power reactor. The NRC staff has confirmed the reduced risks at TMI by comparing the generic risk assumptions in the analyses in NUREG-1738 to site-specific conditions at TMI and determined that

the risk values in NUREG-1738 bound the risks presented at TMI. As indicated by the results of the research conducted for NUREG-1738, and more recently for NUREG-2161, "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor," dated September 2014 (ADAMS Accession No. ML14255A365), while other consequences can be extensive, accidents from SFPs with significant decay time have little potential to cause offsite early fatalities, even if the formal offsite radiological EP requirements were relaxed. The licensee's analysis of a beyond-design-basis accident involving a complete loss of SFP water inventory, based on an adiabatic heat-up analysis of the limiting fuel assembly for decay heat, shows that 488 days after permanent cessation of power operations at TMI-1, the time for the limiting fuel assembly to reach 900 °C is at least 10 hours after the assemblies have been uncovered assuming a loss of all cooling means.

The only analyzed beyond-design-basis accident scenario that progresses to a condition where a significant offsite release might occur, involves the highly unlikely event where the SFP drains in such a way that all modes of cooling or heat transfer are assumed to be unavailable, which is referred to as an adiabatic heat-up of the spent fuel. The licensee's analysis of this beyond-design-basis accident shows that 488 days after permanent cessation of power operations at TMI-1, at least 10 hours would be available between the time that all cooling means are lost to the fuel (at which time adiabatic heat-up is conservatively assumed to begin), until the fuel cladding reaches a temperature of 1652 degrees Fahrenheit (900 °C), which is the temperature associated with rapid cladding oxidation and the potential for a significant radiological release. This analysis conservatively does not include the period of time from the initiating event causing a loss of SFP water inventory until all cooling means are lost.

The NRC staff has verified Exelon's analyses and its calculations. The analyses provide reasonable assurance that in granting the requested exemptions to Exelon, there is no design-basis accident that will result in an offsite radiological release exceeding the EPA early phase PAGs at the exclusion area boundary. In the highly unlikely event of a beyond-design-basis accident affecting the SFP that results in a complete loss of heat removal via all modes of heat transfer, there will be over 10 hours available before an offsite release might occur and, therefore, at

least 10 hours to initiate appropriate mitigating actions to restore a means of heat removal to the spent fuel. If a radiological release were projected to occur under this highly unlikely scenario, a minimum of 10 hours is considered sufficient time for offsite authorities to implement protective actions using a CEMP approach to protect the health and safety of the public.

Exemptions from the offsite EP requirements in 10 CFR part 50 have previously been approved by the NRC when the site-specific analyses show that at least 10 hours is available following a loss of SFP coolant inventory accident with no air cooling (or other methods of removing decay heat) until cladding of the hottest fuel assembly reaches the rapid oxidation temperature. The NRC staff concluded in its previously granted exemptions, as it does with Exelon's requested EP exemptions, that if a minimum of 10 hours is available to initiate mitigative actions consistent with plant conditions or, if needed, for offsite authorities to implement protective actions using a CEMP approach, then formal offsite radiological emergency preparedness plans, required under 10 CFR part 50, are not necessary at permanently shutdown and defueled facilities.

Additionally, TMI committed to maintaining SFP makeup strategies in its application. The multiple strategies for providing makeup to the SFP include: using existing plant systems for inventory makeup; an internal strategy that relies on the fire protection system with redundant pumps (one diesel-driven and one electric motor-driven); and an off-site fire truck that can take suction from the Susquehanna River. These strategies will continue to be required as condition 2.c.(17), "Mitigation Strategy License Condition," of the TMI-1 Renewed Facility Operating License. Considering the very low probability of beyond-design-basis accidents affecting the SFP, these diverse strategies provide multiple methods to obtain additional makeup or spray to the SFP before the onset of any postulated offsite radiological release.

For all of the reasons stated above, the NRC staff finds that the licensee's requested exemptions meet the underlying purpose of all of the standards in 10 CFR 50.47(b), and requirements in 10 CFR 50.47(c)(2) and 10 CFR part 50, Appendix E, and satisfy the special circumstances provision in 10 CFR 50.12(a)(2)(ii) in view of the greatly reduced risk of offsite radiological consequences associated with the permanently shutdown and defueled state of the TMI facility 488

days after permanent cessation of power operations of TMI-1.

The NRC staff has concluded that the exemptions being granted by this action will maintain an acceptable level of emergency preparedness at TMI and, if needed, that there is reasonable assurance that adequate offsite protective measures can and will be taken by State and local government agencies using a CEMP approach in the highly unlikely event of a radiological emergency at TMI. Since the underlying purpose of the rules, as exempted, would continue to be achieved, even with the elimination of the requirements under 10 CFR part 50 to maintain formal offsite radiological emergency preparedness plans and the reduction in the scope of the onsite emergency planning activities at TMI, the special circumstances required by 10 CFR 50.12(a)(2)(ii) exist.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as discussed in the NRC staff's Finding of No Significant Impact and associated Environmental Assessment published in the **Federal Register** on September 22, 2020 (85 FR 59565).

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, Exelon's request for exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, Appendix E, Section IV, and as summarized in Enclosure 2 to SECY-20-0041, are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon's exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, Appendix E, Section IV, as discussed and evaluated in detail in the NRC staff's safety evaluation associated with this exemption. The exemptions are effective as of 488 days after permanent cessation of power operations of TMI-1.

Dated: December 1, 2020.

For the Nuclear Regulatory Commission.

Patricia K. Holahan, Director,

Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020-26767 Filed 12-4-20; 8:45 am]

BILLING CODE 7590-01-P

PEACE CORPS**Information Collection Request; Submission for OMB Review****AGENCY:** Peace Corps.**ACTION:** 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. In accordance with the Paperwork Reduction Act of 1995 and implementing OMB guidance, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB.

DATES: Submit comments on or before January 6, 2021.**ADDRESSES:** Address written comments and recommendations for the proposed information collection to Virginia Burke, FOIA/Privacy Act Officer, by email at pcf@peacecorps.gov. Email comments must be made in text and not in attachments.**FOR FURTHER INFORMATION CONTACT:** Virginia Burke, FOIA/Privacy Act Officer, at (202) 692-1887, or PCFR@peacecorps.gov.**SUPPLEMENTARY INFORMATION:**

Title: Questionnaire for Peace Corps Volunteer Background Investigation.
OMB Control Number: 0420-0001.
Type of Request: Review/Re-approve.
Affected Public: Individuals.
Respondents Obligation to Reply: Voluntary.
Respondents: Potential and current volunteers.

Burden to the Public:

- Questionnaire for Peace Corps Volunteer Background Investigation.
- (a) *Estimated number of Applicants:* 5,000.
- (b) *Frequency of response:* one time.
- (c) *Estimated average burden per response:* 2 Minutes.
- (d) *Estimated total reporting burden:* 167 hours.
- (e) *Estimated annual cost to respondents:* 0.00.

General Description of Collection: The Office of Volunteer Recruitment and Selection uses the Questionnaire for Peace Corps Volunteer Background Investigation form (BI form) as authorization from the invited Peace Corps Volunteer applicant to conduct a background check through the Office of Personnel Management (OPM) or other contract background investigator of pertinent records pertaining to

applicants' interactions with the judicial system, qualifications, eligibility and suitability for Peace Corps volunteer service.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity 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 automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 2, 2020.

Virginia Burke,*FOIA/Privacy Act Officer, Management.*

[FR Doc. 2020-26806 Filed 12-4-20; 8:45 am]

BILLING CODE 6051-01-P**PEACE CORPS****Information Collection Request; Submission for OMB Review****AGENCY:** Peace Corps.**ACTION:** 60-day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. In accordance with the Paperwork Reduction Act of 1995 and implementing OMB guidance, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB.

DATES: Submit comments on or before January 6, 2021.**ADDRESSES:** Address written comments and recommendations for the proposed information collection to Virginia Burke, FOIA/Privacy Act Officer, by email at pcf@peacecorps.gov. Email comments must be made in text and not in attachments.**FOR FURTHER INFORMATION CONTACT:** Virginia Burke, FOIA/Privacy Act Officer, at (202) 692-1887, or PCFR@peacecorps.gov.**SUPPLEMENTARY INFORMATION:** *Title:* Expedited Evacuee Re-entry Application.*OMB Control Number:* 0420-0571.*Type of Request:* Revision/New.*Affected Public:* Individuals.*Respondents Obligation to Reply:* Voluntary.*Respondents:* Potential and current volunteers.**Burden to the Public:**

- Expedited Evacuee Re-entry Application Form

(a) *Estimated number of Applicants/physicians:* 7,000.(b) *Frequency of response:* One time.(c) *Estimated average burden per response:* 15 minutes.(d) *Estimated total reporting burden:* 1,750.(e) *Estimated annual cost to respondents:* 0.00.

General Description of Collection: The information collected by the Expedited Evacuee Re-entry Application is used by the Peace Corps to collect essential information from individual applicants who previously served as Peace Corps Volunteers. The information is used by the Peace Corps Office of VRS in its assessment of an individual's qualifications to serve as a Peace Corps Volunteer. It is designed to offer the Evacuee RPCV an efficient means of re-applying to the Peace Corps. Selection for Peace Corps service is based on that assessment. This is a modification of traditional application form that is still in use, PC-1502, OMB Control Number 0420-0005. The information in the re-entry application will be used by VRS staff to evaluate the qualifications of RPCV applicants and to make selection decisions, including reassigning the RPCV to the evacuated service site.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity 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 automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 2, 2020.

Virginia Burke,*FOIA/Privacy Act Officer, Management.*

[FR Doc. 2020-26863 Filed 12-4-20; 8:45 am]

BILLING CODE 6051-01-P

PEACE CORPS**Information Collection Request;
Submission for OMB Review****AGENCY:** Peace Corps.**ACTION:** 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. In accordance with the Paperwork Reduction Act of 1995 and implementing OMB guidance, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB.

DATES: Submit comments on or before January 6, 2021.**ADDRESSES:** Address written comments and recommendations for the proposed information collection to Virginia Burke, FOIA/Privacy Act Officer, by email at pcfr@peacecorps.gov. Email comments must be made in text and not in attachments.**FOR FURTHER INFORMATION CONTACT:** Virginia Burke, FOIA/Privacy Act Officer, at (202) 692-1887, or PCFR@peacecorps.gov.**SUPPLEMENTARY INFORMATION:***Title:* Peace Corps Response Application.*OMB Control Number:* 0420-0547.*Type of Request:* Revision of a currently approved collection.*Affected Public:* Individuals.*Respondents Obligation to Reply:* Voluntary.*Respondents:* Potential and current volunteers.*Burden to the Public:*

- Peace Corps Response Application
- (a) *Estimated number of Applicants/physicians:* 3,500.

- (b) *Frequency of response:* one time.

- (c) *Estimated average burden per response:* 60 Minutes.

- (d) *Estimated total reporting burden:* 3,500 hours.

- (e) *Estimated annual cost to respondents:* 0.00.

General Description of Collection: The Peace Corps Response Application (hereinafter "the Application") is necessary to recruit qualified volunteers to serve in Peace Corps Response, which sends Volunteers throughout the world to work in specialized short term projects. Applicants are selected based on their qualifications for a specific Volunteer assignment.

Request for Comment: Peace Corps invites comments on whether the

proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity 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 automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 2, 2020.

Virginia Burke,*FOIA/Privacy Act Officer, Management.*

[FR Doc. 2020-26808 Filed 12-4-20; 8:45 am]

BILLING CODE 6051-01-P**RAILROAD RETIREMENT BOARD****2021 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations****AGENCY:** Railroad Retirement Board.**ACTION:** Notice.

SUMMARY: As required by the Railroad Unemployment Insurance Act (Act), the Railroad Retirement Board (RRB) hereby publishes its notice for calendar year 2021 of account balances, factors used in calculating experience-based employer contribution rates, computation of amounts related to the monthly compensation base, and the maximum daily benefit rate for days of unemployment or sickness.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2020. The balance in notice (2) is based on data as of September 30, 2020. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2021. The determinations made in notices (8) through (11) are effective January 1, 2021. The determination made in notice (12) is effective for registration periods beginning after June 30, 2021.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 N Rush Street, Chicago, Illinois 60611-1275.**FOR FURTHER INFORMATION CONTACT:** Michael J. Rizzo, Bureau of the Actuary and Research, Railroad Retirement Board, 844 N Rush Street, Chicago, Illinois 60611-1275, telephone (312) 751-4771.**SUPPLEMENTARY INFORMATION:** The RRB is required by section 8(c)(1) of the

Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Public Law 100-647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2020, the computation of the calendar year 2021 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a-2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2021, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2021.

Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 2020, is \$53,715,608.16;
2. The September 30, 2020, balance of any new loans to the RUI Account, including accrued interest, is \$22,037,957.92;
3. The system compensation base is \$4,071,144,777.80 as of June 30, 2020;
4. The cumulative system unallocated charge balance is (\$454,630,391.67) as of June 30, 2020;
5. The pooled credit ratio for calendar year 2021 is zero;
6. The pooled charged ratio for calendar year 2021 is zero;
7. The surcharge rate for calendar year 2021 is 2.5 percent;
8. The monthly compensation base under section 1(i) of the Act is \$1,710 for months in calendar year 2021;
9. The amount described in sections 1(k) and 3 of the Act as "2.5 times the monthly compensation base" is \$4,275.00 for base year (calendar year) 2021;
10. The amount described in section 4(a-2)(i)(A) of the Act as "2.5 times the monthly compensation base" is \$4,275.00 with respect to disqualifications ending in calendar year 2021;
11. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to \$775 as the monthly compensation base for that year as computed under section 1(i) of this Act

bears to \$600" is \$2,209 for months in calendar year 2021;

12. The maximum daily benefit rate under section 2(a)(3) of the Act is \$82 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2021.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of \$100 million or the amount that bears the same ratio to \$100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than \$100 million (as indexed), but at least \$50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than \$50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The ratio of the June 30, 2020 system compensation base of \$4,071,144,777.80 to the June 30, 1991 system compensation base of \$2,763,287,237.04 is 1.47329772. Multiplying 1.47329772 by \$100 million yields \$147,329,772.00. Multiplying \$50 million by 1.47329772 produces \$73,664,886.00. The Account balance on June 30, 2020, was \$53,715,608.16. Accordingly, the surcharge rate for calendar year 2021 is 2.5 percent.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2021 shall be equal to the greater of (a) \$600 or (b) $\$600 [1 + \{(A - 37,800)/56,700\}]$, where A equals the amount of the applicable base with respect to tier 1 taxes for 2021 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of \$5, it shall be rounded to the nearest multiple of \$5.

Using the calendar year 2021 tier 1 tax base of \$142,800 for A above produces the amount of \$1,711.11, which must then be rounded to \$1,710. Accordingly, the monthly compensation base is

determined to be \$1,710 for months in calendar year 2021.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 3, 4(a-2)(i)(A) and 2(c) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Under section 3, an employee shall be a "qualified employee" if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Under section 4(a-2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends.

Multiplying 2.5 by the calendar year 2021 monthly compensation base of \$1,710 produces \$4,275.00. Accordingly, the amount determined under sections 1(k), 3 and 4(a-2)(i)(A) is \$4,275.00 for calendar year 2021.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to \$775 as the monthly compensation base for that year bears to \$600 shall be taken into account.

The calendar year 2021 monthly compensation base is \$1,710. The ratio of \$1,710 to \$600 is 2.85000000. Multiplying 2.85000000 by \$775 produces \$2,209. Accordingly, the amount determined under section 2(c) is \$2,209 for months in calendar year 2021.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by

approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2021, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of \$1, it shall be rounded down to the nearest multiple of \$1.

The calendar year 2020 monthly compensation base is \$1,655. Multiplying \$1,655 by 0.05 yields \$82.75. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2021, is determined to be \$82.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2020-26829 Filed 12-4-20; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 9, 2020 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at www.sec.gov.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via audio webcast only on the Commission's website at www.sec.gov.

MATTERS TO BE CONSIDERED: The Commission will consider whether to adopt a new rule and rule amendments to modernize the national market system for the collection, consolidation, and dissemination of information with respect to quotations for and transactions in national market system ("NMS") stocks ("NMS information"). Specifically, the Commission will consider whether to expand the content of NMS information that is required to be collected, consolidated, and disseminated as part of the national market system under Regulation NMS and whether to amend the method by which such NMS information is collected, calculated, and disseminated by fostering a competitive environment for the dissemination of NMS information via a decentralized

consolidation model with competing consolidators.

CONTACT PERSON FOR MORE INFORMATION:

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Office of the Secretary, at (202) 551-5400.

Dated: December 2, 2020.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2020-26899 Filed 12-3-20; 11:15 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-90541; File No. SR-LCH
SA-2020-006]

**Self-Regulatory Organizations; LCH
SA; Order Approving Proposed Rule
Change Relating to the Amendments
to LCH SA's Liquidity Risk Modelling
Framework**

December 1, 2020.

I. Introduction

On October 20, 2020, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), 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 its Liquidity Risk Modelling Framework (the "Framework")³ with respect to the assignment and exercise of equity American options.⁴ The Proposed Rule Change was published for comment in the **Federal Register** on October 30, 2020.⁵ The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

**II. Description of the Proposed Rule
Change**

LCH SA is proposing to amend the Framework in order to address more accurately its liquidity requirements arising from the physical settlement of

equity American options involving a defaulting clearing member during any liquidation of such clearing member. The current Framework accounts for liquidity provision related to the risk of assignment and exercise of equity American options and equity European options at expiration.⁶ Given that equity American options can be exercised before their expiration dates (referred to below as "expiry"), LCH SA represented that there is a resulting funding risk with respect to the exercise of equity American options prior to expiry during the liquidation period of a defaulting clearing member that needs to be modelled and accounted for in its daily liquidity coverage ratio ("LCR") calculation.⁷

The LCR is the ratio of available assets over the liabilities of LCH SA under the stressed scenario of the default of the two largest clearing members ("Cover 2 scenario"), based on their liquidity needs.⁸ On a daily basis, the LCR calculation identifies all of the potential option positions that are in the money or at the money on that day and the next business day.⁹ Given the potential option exercise, the LCR calculation generates a liquidity need.¹⁰ LCH SA represented that the proposed rule change would be an enhancement to the current Framework to address the funding risk posed by the potential exercise of an equity American option at any time before expiry when the two largest clearing members in terms of liquidity needs may face liquidity issues.¹¹

To address this risk, LCH SA is proposing specific modifications to the Framework that would enable its LCR calculation to generate an enhanced liquidity need in a Cover 2 scenario involving the physical settlement of equity American options. The proposed rule change would replace the term "expiry" with the term "exercise" in both section 5.3.1.3 (*Cash Equity*) and section 5.3.4 (*Cover 2 selection, Cash Equity Settlement Liquidity Requirement*) to account for equity settlements arising from the options' exercise, rather than their expiry. The proposed rule change would also revise the assumption about when equity American options are considered to be exercised, which is set forth in the "Options Expiry" paragraph of section 5.3.1.3 of the Framework. In that paragraph, the proposed rule change

would replace the term "at expiry" with the phrase "any time by defaulting members in order to raise liquidity."¹²

In practice, LCH SA represents that the process under the amended Framework will work as follows on a daily basis:

- The liquidity needs arising from the equity American options that are in the money or at the money will be computed, without applying a stress scenario to the equities.
- The liquidity needs from the equity American options that are in the money or at the money will be computed, by applying a stress scenario to the equities.
- LCH SA will select the positions consistent with the two largest clearing members in terms of liquidity needs for both modes described above and will retain the most punitive one.
- This liquidity amount that LCH SA will potentially need for the settlement of equity American options (*i.e.*, the most punitive amount identified in the previous bullet) will then be added to the current cash equity settlement amount in the LCR.¹³

**III. Discussion and Commission
Findings**

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.¹⁴ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁵ and Rule 17Ad-22(e)(7)(i) thereunder.¹⁶

*A. Consistency With Section
17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible.¹⁷

As described above, the proposed rule change would amend the Framework with specific changes in order to address more accurately LCH SA's

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the LCH SA CDS Clearing Rule Book, Supplement, Procedures, or the Framework as applicable.

⁴ See Notice *infra* note 5, 85 FR at 68935.

⁵ Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the Amendments of LCH SA Risk Liquidity Modeling Framework, Exchange Act Release No. 90270 (October 26, 2020), 85 FR 68935 (October 30, 2020) (SR-LCH SA-2020-006) ("Notice").

⁶ See Notice, 85 FR at 68936.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ 15 U.S.C. 78s(b)(2)(C).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(7)(i).

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

liquidity requirements arising from the physical settlement of equity American options involving a defaulting clearing member during any liquidation of such clearing member. Such changes should enhance LCH SA's daily LCR calculations to determine more accurate liquidity levels in the event of the assignment and exercise of equity American options involving a defaulting clearing member prior to expiry. The Commission believes the proposed rule change should help LCH SA anticipate increased liquidity needs and maintain appropriate levels of liquidity in a Cover 2 scenario in which LCH SA would be required, pursuant to the Framework, to step in and meet a defaulter's obligation in the event of the assignment or exercise of equity American options. The Commission also believes that, by anticipating and ensuring that LCH SA meets its liquidity needs in this manner, the proposed rule change should facilitate LCH SA's ability to meet its obligations as a central counterparty in stressed situations, which, in turn, should allow LCH SA to continue to meet its obligation to promptly and accurately clear and settle securities transactions in such situations.

In addition, the proposed rule change should help mitigate the funding risk that may arise when equity American options are exercised before expiry and settled during the liquidation period of a defaulting clearing member, which in turn should help LCH SA safeguard securities and funds for which it is responsible.

For the reasons stated above, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹⁸

B. Consistency With Rule 17Ad-22(e)(7)(i)

Rule 17Ad-22(e)(7)(i) requires that, among other things, LCH SA establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day, and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios, that

includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for LCH SA in extreme but plausible market conditions.¹⁹

As discussed above, LCH SA is proposing specific modifications to the Framework that would enable its daily LCR calculation to generate an enhanced liquidity need in a Cover 2 scenario involving the physical settlement of equity American options. By using the daily LCR calculation process to determine in advance LCH SA's liquidity needs in the event of the assignment and exercise of equity American options arising in a Cover 2 scenario, the Commission believes the amended Framework should enhance LCH SA's ability to determine whether it has sufficient resources to meet its liquidity needs should such a default occur, thus requiring LCH SA to step in and meet a defaulter's payment obligation. The Commission believes that this should, in turn, enable LCH SA to avoid any potential disruptions to its operations caused by the liquidity needs arising from such a default.

By applying both stressed and non-stressed scenarios to the underlying equities, and then selecting the option positions that are consistent with the two largest clearing members in terms of liquidity needs under both scenarios to determine the largest liquidity need, LCH SA's daily LCR calculation process under the amended Framework should help LCH SA determine a more accurate amount to add to the current cash equity settlement amount in the LCR to cover a potential increase in liquidity needs arising from the physical settlement of equity American options that are exercised prior to expiry under stressed liquidity conditions. The Commission therefore believes that the amended Framework should enable LCH SA to maintain sufficient liquid resources to effect settlement of its payment obligations under a wide range of foreseeable stress scenarios, including the default of the participant family that would generate the largest aggregate payment obligation for LCH SA in extreme but plausible market conditions.

For the above reasons, the Commission therefore finds that the proposed rule change is consistent with Rule 17Ad-22(e)(7)(i).²⁰

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed

rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act²¹ and Rule 17Ad-22(e)(7)(i) thereunder.²²

It is therefore ordered pursuant to Section 19(b)(2) of the Act²³ that the proposed rule change (SR-LCH SA-2020-006) be, and hereby is, approved.²⁴

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-26783 Filed 12-4-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, December 9, 2020. **PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;

²¹ 15 U.S.C. 78q-1(b)(3)(F).

²² 17 CFR 240.17Ad-22(e)(7)(i).

²³ 15 U.S.C. 78s(b)(2).

²⁴ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁵ 17 CFR 200.30-3(a)(12).

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(7)(i).

²⁰ 17 CFR 240.17Ad-22(e)(7)(i).

Resolution of litigation claims; and Other matters relating to enforcement proceedings; and

Disclosure of non-public information.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: December 2, 2020.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2020-26892 Filed 12-3-20; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90542; File No. SR-NASDAQ-2020-078]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Exempt Proxy Portfolio Shares From Certain Governance Requirements and Include Proxy Portfolio Shares to the List of Products Covered Under Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts)

December 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 19, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide an exemption from certain governance requirements, as well as to include Proxy Portfolio Shares (listed on the Exchange pursuant to Nasdaq Rule 5750) to the list of products covered under Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts).

The text of the proposed rule change is available on the Exchange’s website at

<https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted Nasdaq Rule 5750, which relates to the listing and trading of Proxy Portfolio Shares³ on the Exchange.⁴ Nasdaq proposes to amend the definition of “Derivative Securities” under Nasdaq Rule 5615(a)(6)(B) as well as certain portions of Nasdaq Rule 4120 to include and apply to a series of Proxy Portfolio Shares listed on the Exchange pursuant to Nasdaq Rule 5750.

Nasdaq notes that the proposed rule change, as discussed below, results from the Exchange proposing to make conforming changes to its corporate governance requirements in order to accommodate the listing of Proxy Portfolio Shares. This will subject Proxy

³ The term “Proxy Portfolio Shares” means “a security that: (A) Represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (B) is issued in a specified aggregate minimum number in return for a deposit of a specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.”

⁴ See Securities and Exchange Act Release No. 34-89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR-NASDAQ-2020-032) (the “Rule Proposal”). The Rule Proposal was effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(6) thereunder and became operative 30 calendar days following the filing date of June 11, 2020.

Portfolio Shares to the same corporate governance requirements as other exchange-traded products listed on the Exchange.

Currently, Nasdaq Rule 5615(a)(5) provides management investment companies exemptions to certain corporate governance requirements.⁵ Nasdaq Rule 5615(a)(5) also provides that management investment companies that are Derivative Securities (as defined in Nasdaq Rule 5615(a)(6)(B))⁶ are also exempt from the additional requirements of Nasdaq Rule 5600 as outlined in Nasdaq Rule 5615(a)(6)(A). In addition to the exemptions found in Nasdaq Rule 5615(a)(5), Nasdaq Rule 5615(a)(6)(A) also includes exemptions from the audit committee requirements in Nasdaq Rule 5605(c), except for the applicable requirements of SEC Rule 10A-3.⁷

Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares are all considered Derivative Securities and, therefore, exempt from the audit committee requirements set forth in Nasdaq Rule 5605(c). They are exempted from such requirements because they are otherwise subject to the accounting and auditing requirements of the Investment Company Act of 1940 (the “1940 Act”), including Section 32(a).⁸

Proxy Portfolio Shares are also subject to the accounting and auditing requirements under the 1940 Act and are so similarly situated as Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares, that the Exchange believes Proxy Portfolio Shares should be subject to, and exempt from, the same corporate governance

⁵ See Nasdaq Rule 5605(b) (Independent Directors); Nasdaq Rule 5605(d) (Compensation Committee); Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations); and Nasdaq Rule 5610 (Codes of Conduct).

⁶ Nasdaq Rule 5615(a)(6)(B) states: “For the purposes of this Rule 5600 Series only, the term “Derivative Securities” is defined as the following: Exchange Traded Fund Shares (Rule 5704), Portfolio Depository Receipts and Index Fund Shares (Rule 5705); Equity Index-Linked Securities (Rule 5710(k)(i)), Commodity-Linked Securities (Rule 5710(k)(ii)), Fixed Income Index-Linked Securities (Rule 5710(k)(iii)), Futures-Linked Securities (Rule 5710(k)(iv)), Multifactor Index-Linked Securities (Rule 5710(k)(v)), Index-Linked Exchangeable Notes (Rule 5711(a)), Equity Gold Shares (Rule 5711(b)), Trust Certificates (Rule 5711(c)), Commodity-Based Trust Shares (Rule 5711(d)), Currency Trust Shares (Rule 5711(e)), Commodity Index Trust Shares (Rule 5711(f)), Commodity Futures Trust Shares (Rule 5711(g)), Partnership Units (Rule 5711(h)), Managed Trust Securities (Rule 5711(j)), SEEDS (Rule 5715), Trust Issued Receipts (Rule 5720), Managed Fund Shares (Rule 5735), and NextShares (Rule 5745). Derivative Securities are subject to certain exemptions to the Rule 5600 Series as described in Rule 5615(a)(6).”

⁷ 17 CFR 240.10A-3.

⁸ 15 U.S.C. 80a-31.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

requirements associated with listing on the Exchange. Thus, Nasdaq is proposing to make a change to amend Nasdaq Rule 5615(a)(6)(B) to add Proxy Portfolio Shares to the definition of Derivative Securities. Nasdaq Rule 5615(a)(5) allows management investment companies that are considered Derivative Securities to be subject to the exemptions from the audit committee requirements in Nasdaq Rule 5605(c) (except for the applicable requirements of SEC Rule 10A-3) included in Nasdaq Rule 5615(a)(6)(A).

Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares are all considered Derivative Securities and, therefore, exempt from the annual meeting requirements set forth in Nasdaq Rule 5620(a). They are exempted from such requirements because they are securities issued by an open-end investment company registered under the 1940 Act that are available for creation and redemption on a continuous basis, and require dissemination of a relevant portfolio value at regular intervals. These requirements provide important investor protections and ensure that the net asset value and the market price remain closely tied to one another while maintaining a liquid market for the security. These protections, along with the disclosure documents regularly received by investors, allow shareholders of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares to value their holdings on an ongoing basis and lessen the need for shareholders to directly deal with management at an annual meeting.⁹

Thus, Nasdaq is proposing to amend Nasdaq Rule 5615(a)(6)(B) to add Proxy Portfolio Shares to the definition of Derivative Securities. Nasdaq Rule 5615(a)(5) allows management investment companies that are considered Derivative Securities to be subject to the exemptions in Nasdaq Rule 5615(a)(6)(A), which includes the exemption from the annual meeting requirements in Nasdaq Rule 5620(a). The Exchange notes that the proposed changes would result in rules that are substantially similar to that of NYSE Arca, Inc.¹⁰

Nasdaq is also proposing to amend Nasdaq Rule 4120(a)(9) to include Proxy Portfolio Shares in the list of securities that Nasdaq will have discretion to halt trading in if “(A) trading in underlying

securities comprising the index or portfolio applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index or portfolio, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.” Nasdaq believes change this is appropriate because it will subject Proxy Portfolio Shares to the same halt requirements as other Nasdaq listed securities that derive value from an index or portfolio of underlying securities.

Additionally, Nasdaq is proposing to amend Nasdaq Rule 4120(a)(10) to specify that Nasdaq will halt trading in a series of Proxy Portfolio Shares if the net asset value, Proxy Basket, or Fund Portfolio are not being disseminated to market participants at the same time. Nasdaq believes this change is appropriate because it will subject Proxy Portfolio Shares to the same halt requirements as other Nasdaq listed securities that are required to publish similar values on a regular basis.

Nasdaq is also proposing to add Proxy Portfolio Shares to the definition of “Derivative Securities Products” as found in Nasdaq Rule 4120(b)(4)(A). Nasdaq believes change this is appropriate because it will specify the Proxy Portfolio Shares are subject to the requirements of Nasdaq Rule 4120(a)(10).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is consistent with the Section 6(b)(5) 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 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.

The Exchange believes that the proposed change to amend Nasdaq Rule 5615(a)(6)(B) to include Proxy Portfolio Shares in the definition of Derivative Securities (along with Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares, among others), and thereby exempting Proxy Portfolio Shares from the audit committee requirements in Nasdaq Rule 5605(c) (except for the applicable requirements of SEC Rule 10A-3) and

the annual meeting requirements in Nasdaq Rule 5620(a), is consistent with the Act because it is meant only to subject Proxy Portfolio Shares to the same corporate governance requirements currently applicable to the very similar product structures of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares. The Exchange believes that this will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange further believes that the proposed changes to Nasdaq Rule 4120(a)(9), Nasdaq Rule 4120(a)(10), and Nasdaq Rule 4120(b)(4)(A) are consistent with the Act because it is meant only to subject Proxy Portfolio Shares to the same halt requirements currently applicable to the very similar product structures of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares. Nasdaq believes that this too will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change would promote both intermarket and intramarket competition by providing Proxy Portfolio Shares the same exemptions as management investment companies from certain corporate governance requirements¹³ the audit committee requirements set forth in Nasdaq Rule 5605(c) (except for the applicable requirements of SEC Rule 10A-3) and the annual meeting requirements of Nasdaq Rule 5620(a). This is consistent with the exemptions provided to Index Fund Shares, Managed Fund Shares, and Exchange Traded Fund Shares.

Additionally, the Exchange believes that the proposed changes to Nasdaq Rule 4120(a)(9), Nasdaq Rule 4120(a)(10), and Nasdaq Rule 4120(b)(4)(A) will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because these only serve to subject Proxy Portfolio

⁹ See Securities and Exchange Act Release No. 34-86072 (June 10, 2019), 84 FR 27816 (June 14, 2020) (SR-NASDAQ-2019-039).

¹⁰ See Securities and Exchange Act Release No. 34-89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Supra* note 5.

Shares to the same halt requirements currently applicable to the similar product structures of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-078 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NASDAQ-2020-078. 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-NASDAQ-2020-078 and should be submitted on or before December 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-26784 Filed 12-4-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90543; File No. SR-NSCC-2020-018]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Fee Structure

December 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 16, 2020, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change. On November 30, 2020, NSCC filed Amendment No. 1 to the proposed rule change, which revised a portion of the rule text and corresponding description in the notice relating to NSCC's current policy regarding the issuance of rebates to Participants. NSCC filed the proposed rule change, as modified by Amendment No. 1, pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴ The proposed rule change, as modified by Amendment No. 1, is described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, as Modified by Amendment No. 1

The proposed rule change, as modified by Amendment No. 1, consists of amendments to Addendum A (Fee Structure) of the NSCC Rules & Procedures (“Rules”)⁵ in order to (i) modify the Clearing Fund Maintenance Fee (“Maintenance Fee”), (ii) modify the “value out of the net” component of the Clearance Activity Fee, and (iii) replace the description currently under the heading “NSCC Pricing Policy” with a description of NSCC's current policy regarding the issuance of rebates to Members, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 1

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change, as modified by Amendment No. 1, and discussed any comments it received on the proposed rule change, as modified by Amendment No. 1. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Capitalized terms not defined herein are defined in the Rules, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/nsccl_rules.pdf.

summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 1

1. Purpose

The purpose of this proposed rule change, as modified by Amendment No. 1, is to amend Addendum A (Fee Structure) of the Rules in order to (i) modify the Maintenance Fee, (ii) modify the “value out of the net” component of the Clearance Activity Fee, and (iii) replace the description currently under the heading “NSCC Pricing Policy” with a description of NSCC’s current policy regarding the issuance of rebates to Members.

(i) Overview

NSCC provides clearance and settlement services for trades executed by its Members in the U.S. equity, corporate and municipal bond, and unit investment trust markets.

Members are assessed fees in accordance with Addendum A (Fee Structure). The current Fee Structure covers a multitude of fees that are assessed on Members based upon their activities and the services utilized.

NSCC operates a cost plus low margin pricing model and has in place procedures to control costs and to regularly review pricing levels against costs of operation. It reviews pricing levels against its costs of operation typically during the annual budget process. The budget is approved annually by the Board. NSCC’s fees are cost-based plus a markup, as approved by the Board or management (pursuant to authority delegated by the Board), as applicable. This markup or “low margin” is applied to recover development costs and operating expenses, and to accumulate capital sufficient to meet regulatory and economic requirements.

Maintenance Fee

NSCC implemented the Maintenance Fee in the current Fee Structure in 2016 in order to (i) diversify NSCC’s revenue sources, mitigating NSCC’s dependence on revenues driven by trading volumes, and (ii) add a more stable revenue source that would contribute to NSCC’s operating margin by offsetting increasing costs and expenses.⁶ The fee is charged to all NSCC Members and Limited Members that are required to

make deposits to the NSCC Clearing Fund (collectively, “Contributing Members”) in proportion to the Contributing Member’s average, end of day, monthly cash deposit to the Clearing Fund.

Until June 2020, the Maintenance Fee had been calculated monthly, in arrears, as the product of (A) 0.25 percent and (B) the average of the Contributing Member’s actual cash deposit to the NSCC Clearing Fund as of the end of each day of the month, multiplied by the number of days in that month and divided by 360. However, by its terms at the time, the fee had been waived if the monthly rate of return on NSCC’s investment of the cash portion in the Clearing Fund was less than 0.25 percent for the month (“Waiver Provision”).

In June 2020, NSCC modified the Maintenance Fee in three ways.⁷ First, NSCC removed the Waiver Provision. Second, instead of using a fixed rate of 0.25 percent when calculating the Maintenance Fee, NSCC calculated the fee using the corresponding month’s average Interest Rate on Excess Reserves (*i.e.*, the IOER rate) that is determined by the Board of Governors of the Federal Reserve System.⁸ Third, NSCC set a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in the fee calculation.

Those three modifications were designed to help address an immediate financial issue that NSCC was experiencing due to the coronavirus global pandemic and overall reaction by the financial markets, and, based on information at the time, to better position NSCC going forward, with respect to its ability to fund its default liquidity resources in various economic environments, as well as to improve the overall functioning of the Maintenance Fee.⁹ However, after completing NSCC’s annual budgeting process that began in August and finished in October 2020—in which NSCC evaluated its short- and long-term financial position in consideration of expected Contributing Member activity, revenues, cost of funding,¹⁰ market volatility, and the financial markets more broadly,

concerns remained around NSCC’s net income operating margin.

To help address this issue, NSCC proposes to further modify the Maintenance Fee. Specifically, NSCC will no longer calculate the fee using the corresponding month’s average IOER rate but, instead, return to using a fixed rate of 0.25 percent, which, consequently, would render the current floor of 0.00 percent unnecessary. NSCC is using a fixed rate of 0.25 percent so that Members will not be charged an amount greater than what was possible under the original and current calculation of the fee.

NSCC believes that reverting to a fixed rate in calculating the Maintenance Fee would have a number of benefits. For example, by using a fixed rate, the fee would no longer fluctuate as the IOER rate fluctuates, which should help Contributing Members better anticipate the cost of the fee and, for NSCC, stabilize revenue generated from the fee. Greater stability in the revenue generated from the fee would help support NSCC’s net income operating margin and, accordingly, its credit ratings, which are key factors in NSCC’s costs, expenses, and funding.¹¹ Additionally, the proposed change would help provide consistent pricing between NSCC and its affiliate clearing agencies, The Depository Trust Company (“DTC”) and Fixed Income Clearing Corporation (“FICC”),¹² as both DTC and FICC have filed proposed rule changes concurrently with this filing that would result in the same calculation of their respective maintenance fees.¹³

Clearance Activity Fee

The “value out of the net” component of the Clearance Activity Fee in the Fee Structure is a fee based on the daily aggregate market value of all settling CNS positions after netting. It is currently \$2.12 per million dollars of settling value (*i.e.*, the absolute value of

¹¹ Not only could a downgrade to an NSCC credit rating increase NSCC costs and expenses, but, more importantly, it could reduce the overall availability of default liquidity resources to NSCC if investors or lending banks reduce their current levels of engagement with NSCC.

¹² The Depository Trust & Clearing Corporation (“DTCC”) is the parent company of DTC, NSCC, and FICC. DTCC operates on a shared services model for DTC, NSCC, and FICC. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to DTC, NSCC, or FICC.

¹³ See File No. SR-DTC-2020-014 and File No. SR-FICC-2020-014 available at <https://www.dtcc.com/legal/sec-rule-filings>.

⁷ Securities Exchange Act Release No. 89141 (June 24, 2020), 85 FR 39253 (June 30, 2020) (SR-NSCC-2020-011) (“June Filing”).

⁸ Policy Tools, Interest on Required Reserve Balances and Excess Balances, <https://www.federalreserve.gov/monetarypolicy/reqresbalances.htm>.

⁹ See June Filing, *supra* note 7 (discussing the rationale for the three modifications made to the Maintenance Fee).

¹⁰ See June Filing, *supra* note 7 (discussing NSCC’s cost of funding).

⁶ Securities Exchange Act Release No. 78525 (August 9, 2016), 81 FR 54146 (August 15, 2016) (SR-NSCC-2016-002).

the CNS Long Positions and Short Positions).¹⁴

Due to the coronavirus global pandemic and overall reaction by the financial markets, NSCC's cost of funding has risen sharply in 2020, particularly for NSCC's key default liquidity resources. The unexpected increases in cost and expense to secure and maintain those default liquidity resources has added millions of dollars to NSCC's expense.

As described above, after completing NSCC's 2020 annual budgeting process—in which NSCC evaluated its short- and long-term financial position in consideration of expected Member activity, revenues, cost of funding, market volatility, and the financial markets more broadly, concerns remained around NSCC's net income operating margin. In order to address this issue and to better align cost with revenue, NSCC proposes to modify the “value out of the net” component of the Clearance Activity Fee from \$2.12 per million dollars of settling value to \$2.56 per million dollars of settling value. Specifically, NSCC anticipates that the proposed change would enable NSCC to offset the increase in its cost and expense while generating a low net income operating margin, consistent with NSCC's cost plus low margin pricing model.

NSCC believes modifying the “value out of the net” component of the Clearance Activity Fee would further help support NSCC's net income operating margin and, accordingly, its credit ratings, which, as described above, are key factors in NSCC's costs, expenses, and funding.

Rebate Policy

NSCC is also proposing to amend Section VIII of the Fee Structure to replace the description currently under the heading “NSCC Pricing Policy” with a description of its current policy regarding the issuance of rebates to Members. In connection with this change, the proposed change would also amend the title of Section VIII to “NSCC Rebate Policy” to better describe the policy in this section.

Section VIII of the Fee Structure currently includes an outdated description of NSCC's policy to adjust Members' invoices based on NSCC's revenues. This description states that NSCC may adjust invoices down in the form of a discount or up in the form of

a surcharge, based on its revenues. NSCC did historically provide its Members with a discount on their invoices, but it does not have any record of adjusting Members' invoices up, in the form of a surcharge, in the past.

NSCC views its practice of providing a rebate to its Members as a corporate function, and not related to its operation as a self-regulatory organization. An NSCC rebate is essentially a return of the revenue that NSCC collects through the fees it charges Members for its services (as set forth in Addendum A of the Rules). Rebates are not related to the amounts Members deposit with NSCC as their Required Fund Deposits, which are made up of risk-based margin charges calculated pursuant to Procedure XV of the Rules. The determination to provide a rebate is made at the corporation-level, based on a number of factors and considerations, as described below, and is not a separate determination made for each individual Member.

Following the financial recession of 2008, NSCC ceased providing such discounts in connection with the implementation of a financial strategy to strengthen its financial position and health. As a result of that strategy and improved financial markets, in 2019 NSCC determined to reinstitute its practice of discounting Members' invoices, in the form of a rebate, based on its financial performance. In connection with this decision, NSCC is proposing to replace the language under the heading “NSCC Pricing Policy” in Section VIII of the Fee Structure to describe its current rebate practice. This proposed change would not change NSCC's current rebate practice but would provide Members with transparency into this practice and the governance around rebates.

(ii) Proposed Fee Changes

NSCC is proposing to change the Maintenance Fee in Subsection G (Clearing Fund Maintenance Fee) of Section V (Pass-Through and Other Fees) of the Fee Structure. Specifically, NSCC is proposing to modify the Maintenance Fee by removing language regarding application of the IOER rate and a floor of 0.00 percent.

In addition, NSCC is proposing to change the Clearance Activity Fee in Subsection A (Clearance Activity Fee) of Section II (Trade Clearance Fees) of the Fee Structure. Specifically, NSCC is proposing to modify the “value out of the net” component of the Clearance Activity Fee from \$2.12 per million of settling value to \$2.56 per million of settling value.

Finally, NSCC is proposing to amend Section VIII of the Fee Structure to replace the description currently under the heading “NSCC Pricing Policy” with a description of its current policy regarding the issuance of rebates to Members, as described above.

First, in connection with this change, the proposed change would also amend the title of Section VIII to “NSCC Rebate Policy” to better describe the policy in this section.

Second, the proposed language would describe that NSCC may provide Members with a rebate of excess net income, and would define excess net income as either income of NSCC or income related to one business line of NSCC, after application of expenses, capitalization costs, and applicable regulatory requirements. The language would also state that a rebate is discretionary, to make it clear that NSCC is not obligated to provide a rebate.

Third, the proposed language would state that a rebate would be approved by the Board. The proposed language would also state that, in determining whether a rebate is appropriate, the Board would consider one or more of the following, as appropriate: NSCC's regulatory capital requirements,¹⁵ anticipated expenses, investment needs, anticipated future expenses with respect to improvement or maintenance of NSCC's operations, cash balances, financial projections, and appropriate level of shareholders' equity.

Fourth, the proposed language would state that, if the Board determined to issue a rebate, it would set a rebate period and a rebate payment date, both of which are used to determine which Members are eligible for a rebate. The proposed language would state that Members that maintain their membership during all or a portion of the rebate period and on the rebate payment date are eligible for a rebate.

Finally, the proposed language would describe how rebates are applied to the invoices of eligible Members. The proposed language would state that rebates are applied to all eligible Members on a pro-rata basis based on

¹⁵ NSCC manages its general business risk by holding sufficient liquid net assets funded by equity to cover potential general business losses so it can continue operations and services as going concerns if those losses materialize, in compliance with the requirements of Rule 17Ad-22(e)(15). 17 CFR 240.17Ad-22(e)(15). NSCC maintains a Clearing Agency Policy on Capital Requirements which defines the amount of capital it must maintain for this purpose and sets forth the manner in which this amount is calculated. See Securities Exchange Act Release No. 89360 (July 21, 2020), 85 FR 45280 (July 27, 2020) (SR-NSCC-2020-014) (amending original filing).

¹⁴ The current “value out of the net” component of the Clearance Activity Fee was implemented in 2019 as part of fee changes to address pricing complexity. See Securities Exchange Act Release No. 84770 (December 10, 2018), 83 FR 64374 (December 14, 2018) (SR-NSCC-2018-011).

such Members' gross fees paid to NSCC within the applicable rebate period, excluding pass-through fees and interest earned on Required Fund Deposits. The proposed language would also state that rebates are applied to eligible Members' invoices on the rebate payment date as either a reduction in fees owed or, if fees owed are lower than the allocated rebate amount, a payment of such difference. The proposed language would also note that rebate amounts may be adjusted for miscellaneous charges and discounts.

(iii) Expected Member Impact

The proposed rule change, as modified by Amendment No. 1, is expected to increase NSCC's annual revenue by approximately \$31.6 million.

In general, NSCC anticipates that, as result of the proposed changes, approximately 62% of impacted affiliated family of members would have a fee increase of less than \$1,000 per year, approximately 24% of impacted affiliated family of members would have a fee increase between \$1,000 to \$100,000 per year, approximately 10% of impacted affiliated family of members would have a fee increase of \$100,000 to \$1 million per year, and approximately 4% of impacted affiliated family of members would have a fee increase of \$1 million or greater per year.

(iv) Member Outreach

NSCC has conducted ongoing outreach to each Member in order to provide them with notice of the proposed changes and the anticipated impact for the Member. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

(v) Implementation Timeframe

NSCC would implement this proposal on January 1, 2021. As proposed, a legend would be added to the Fee Structure stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include the date on which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed.

2. Statutory Basis

NSCC believes this proposal is consistent with the requirements of the

Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes the proposed changes to modify the Maintenance Fee and the "value out of the net" component of the Clearance Activity Fee are consistent with Section 17A(b)(3)(D) of the Act¹⁶ and the proposed change to include a description of NSCC's current policy regarding the issuance of rebates to Members is consistent with Rule 17Ad-22(e)(23)(ii),¹⁷ as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act¹⁸ requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes that the proposed changes to the Maintenance Fee and the "value out of the net" component of the Clearance Activity Fee are consistent with this provision of the Act.

As described above, the proposal would modify the Maintenance Fee to no longer calculate the fee using the corresponding month's average IOER rate; rather, the calculation would revert to using a fixed rate of 0.25 percent, thus, negating the need to maintain the current floor of 0.00 percent.

Because the proposed change would not alter how the Maintenance Fee is currently allocated (*i.e.*, charged) to Contributing Members, NSCC believes the fee would continue to be equitably allocated. More specifically, as mentioned above, the Maintenance Fee is and would continue to be charged to all Contributing Members in proportion to the Contributing Member's average monthly cash deposit to the Clearing Fund. As such, and as is currently the case, Contributing Members that make greater use of NSCC's guaranteed services or which have activity in those services that present greater risk to NSCC would generally be subject to a larger Maintenance Fee because such Contributing Members would typically be required to maintain larger Clearing Fund deposits pursuant to the Rules.¹⁹ Conversely, Contributing Members that use NSCC's guaranteed services less or which have activity that presents less risk would generally be subject to a smaller Maintenance Fee because such Contributing Members would typically be required to maintain smaller Clearing Fund deposits pursuant to the Rules.²⁰ The proposed change to the Maintenance Fee would not adjust that

allocation. For this reason, NSCC believes the Maintenance Fee would continue to be equitably allocated among Contributing Members.

Similarly, NSCC believes that the Maintenance Fee would continue to be a reasonable fee under the proposed change described above. For example, by using a fixed rate, instead of a rate that fluctuates with the IOER rate, Contributing Members should be better able to anticipate the cost of the fee. Meanwhile, a fixed rate would not only improve NSCC's ability to estimate revenue from the fee, but it also would stabilize the revenue received from the fee. As described above, greater stability in the revenue generated from the fee would help support NSCC's net income operating margin and, accordingly, its credit ratings, which are key factors in NSCC's costs, expenses, and funding. Additionally, using a fixed rate of 0.25 percent would help ensure that Contributing Members are not charged an amount greater than what was possible under the original and current calculation of the fee. Lastly, the proposed change would help establish consistent pricing between NSCC and its affiliates, DTC and FICC, regarding each of their respective Maintenance Fees, as concurrent proposals by DTC and FICC would result in the same calculation.²¹ For this reason, NSCC believes the Maintenance Fee would continue to be reasonable. Based on the forgoing, NSCC believes the proposed rule change to the Maintenance Fee is consistent with Section 17A(b)(3)(D) of the Act.²²

NSCC believes the proposed rule change to the "value out of the net" component of the Clearance Activity Fee would provide for the equitable allocation of reasonable fees. Because the proposed change would not alter how the Clearance Activity Fee is currently allocated (*i.e.*, charged) to Members, NSCC believes the fee would continue to be equitably allocated. More specifically, as mentioned above, the "value out of the net" component of the Clearance Activity Fee is based on a Member's daily aggregate market value of all settling CNS positions after netting. As such, and as is currently the case, Members that make greater use of NSCC's guaranteed services would generally be subject to a larger Clearance Activity Fee because such Members would typically have higher value of net positions after netting. Conversely, Members that use NSCC's guaranteed services less would generally be subject to a smaller Clearance Activity Fee

¹⁶ 15 U.S.C. 78q-1(b)(3)(D).

¹⁷ 17 CFR. 17Ad-22(e)(23)(ii).

¹⁸ 15 U.S.C. 78q-1(b)(3)(D).

¹⁹ See Rule 4 and Procedure XV, *supra* note 5.

²⁰ *Id.*

²¹ See *supra* note 13.

²² 15 U.S.C. 78q-1(b)(3)(D).

because such Members would typically have lower value of net positions after netting. The proposed change to the “value out of the net” component of the Clearance Activity Fee would not adjust that allocation. For this reason, NSCC believes the Clearance Activity Fee would continue to be equitably allocated among Members.

NSCC believes that the Clearance Activity Fee would continue to be a reasonable fee under the proposed change described above. This is because the proposed change to modify the “value out of the net” component of the Clearance Activity Fee is designed to offset NSCC’s increased costs and expenses while generating a low net income operating margin. As described above, in determining the appropriate level of the proposed change to modify the “value out of the net” component of the Clearance Activity Fee, NSCC considered a variety of factors, including expected Member activity, revenues, cost of funding, market volatility, and the financial markets more broadly. Based on that consideration, NSCC believes the proposed change would allow NSCC to assess a fee that is better aligned with NSCC’s increased costs and expenses. Having the ability to assess a fee that is better aligned with NSCC’s increased costs and expenses would further help support NSCC’s net income operating margin and, accordingly, its credit ratings, which are key factors in NSCC’s costs, expenses, and funding. For this reason, NSCC believes the Clearance Activity Fee would continue to be reasonable. Based on the forgoing, NSCC believes the proposed rule change to the “value out of the net” component of the Clearance Activity Fee is consistent with Section 17A(b)(3)(D) of the Act.²³

Rule 17Ad–22(e)(23)(i) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.²⁴ The proposed change would replace an outdated description of NSCC’s past practice of adjusting Members’ invoices with an updated description of its current rebate practice, which, when applicable, results in a reduction to the amount of fees a Member owes to NSCC. By updating the Fee Structure with a clear, transparent description of NSCC’s current rebate practice, the proposed change would

provide Members with sufficient information to evaluate the fees they may incur by participating in NSCC. Therefore, NSCC believes the proposed change would be consistent with the requirements of Rule 17Ad–22(e)(23)(ii).²⁵

(B) Clearing Agency’s Statement on Burden on Competition

NSCC does not believe that the proposed change to the Maintenance Fee would have an impact on competition among Contributing Members. As described above, the Maintenance Fee is charged ratably based on Contributing Members’ use of NSCC’s guaranteed services, as reflected in Contributing Members’ deposits to the Clearing Fund. Thus, the fee is designed to be reflective of each Contributing Member’s individual activity at NSCC. Additionally, NSCC does not believe reverting to a fixed rate of 0.25 percent in calculating the Maintenance Fee would have any impact on competition among Contributing Members because using such a rate means that Contributing Members still cannot be assessed an amount greater than what could have been assessed under the original and current calculations of the fee.

However, appreciating that the value of a dollar is not consistent for each Contributing Member, if the change to no longer calculate the fee using the corresponding month’s average IOER rate would create a competitive burden for a Contributing Member because the Contributing Member could be assessed a higher fee at a time when that IOER rate is lower than the proposed 0.25 percent fixed rate, NSCC believes such a burden would not be significant, given that the amount assessed would still be within the range of what could be assessed under the current calculation. Moreover, NSCC believes that any such burden would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.²⁶

The burden would be necessary because it is essential that NSCC continue to offset some of its costs and expenses with stable revenue generated from the Maintenance Fee, regardless of the economic environment. As described above, not doing so could adversely affect NSCC’s credit ratings, which could further increase funding or, possibly, decrease the availability of crucial liquidity resources for NSCC. The burden would be appropriate because, as described above, the

Maintenance Fee is calculated, using a balanced formula, to assess a fee that is reflective of the Contributing Member’s use of NSCC’s guaranteed services, so that NSCC can defray some of its costs and expenses in providing those services. More specifically, returning to a fixed rate of 0.25 percent would be appropriate because it is the same rate that was used prior to the change made in June 2020,²⁷ and it is currently the ceiling used in the existing calculation; thus, the new calculation still would not use a rate any higher than it could have previously.

NSCC believes the proposed rule change to modify the “value out of the net” component of the Clearance Activity Fee may have an impact on competition among its Members because the change would likely increase the fees of those Members that utilize NSCC’s guaranteed service when compared to their fees under the current Fee Structure. NSCC believes the proposed change could burden competition by negatively affecting such Members’ operating costs. While these Members may experience increases in their fees when compared to their fees under the current Fee Structure, NSCC does not believe the proposed change in and of itself mean that the burden on competition is significant. This is because even though the amount of the fee increase may seem significant (e.g., from \$2.12 to \$2.56 per million of settling value), NSCC believes the increase in fees would similarly affect all Members that utilize NSCC’s guaranteed services and would be reflective of each Member’s individual activity at NSCC, and therefore the burden on competition would not be significant. Regardless of whether the burden on competition is deemed significant, NSCC believes any burden that is created by this proposed change would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.²⁸

The burden would be necessary because it is essential that NSCC continue to offset some of its costs and expenses with revenue generated from the Clearance Activity Fee, regardless of the economic environment. As described above, not doing so could adversely affect NSCC’s credit ratings, which could further increase funding or, possibly, decrease the availability of crucial liquidity resources for NSCC. The burden would be appropriate because, as described above, the Clearance Activity Fee is calculated,

²³ *Id.*

²⁴ 17 CFR 240.17Ad–22(e)(23)(iii).

²⁵ *Id.*

²⁶ 15 U.S.C. 78q–1(b)(3)(I).

²⁷ See June Filing, *supra* note 7.

²⁸ *Id.*

using a balanced formula, to assess a fee that is reflective of the Member's use of NSCC's guaranteed services, so that NSCC can defray some of its costs and expenses in providing those services. More specifically, NSCC believes the proposed rule change to modify the "value out of the net" component of the Clearance Activity Fee would be appropriate because it would allow NSCC to assess a fee that is better aligned with NSCC's increased costs and expenses while generating a low net income operating margin.

NSCC does not believe the proposed change to describe its current rebate practice would have any impact, or impose any burden, on competition among its Members. As described above, this proposed rule change, as modified by Amendment No. 1, would replace outdated information currently in the Fee Structure with an updated description of NSCC's current rebate practice. As described in the proposed language, under its current practice, rebates are allocated to eligible Members on a pro-rata basis based on such Members' gross fees paid to NSCC within the applicable rebate period. Therefore, the current practice is applied equally to all eligible Members. The proposed change to provide Members with transparency into this practice would not cause any increase or decrease in the rebates Members may receive. Therefore, this proposed rule change, as modified by Amendment No. 1, would not have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, as Modified by Amendment No. 1, Received From Members, Participants, or Others

Written comments relating to this proposed rule change, as modified by Amendment No. 1, have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, as Modified by Amendment No. 1, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁹ and paragraph (f) of Rule 19b-4 thereunder.³⁰ At any time within 60 days of the filing of the proposed rule change, as modified by Amendment No. 1, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NSCC-2020-018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to File Number SR-NSCC-2020-018. 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, as modified by Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Amendment No. 1, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-

2020-018 and should be submitted on or before December 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-26785 Filed 12-4-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90546; File No. SR-DTC-2020-014]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Guide to the DTC Fee Schedule

December 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 16, 2020, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On November 30, 2020, DTC filed Amendment No. 1 to the proposed rule change, which revised a portion of the rule text and corresponding description in the notice relating to DTC's current policy regarding the issuance of rebates to Participants. DTC filed the proposed rule change, as modified by Amendment No. 1, pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴ The proposed rule change, as modified by Amendment No. 1, is described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, as Modified by Amendment No. 1

The proposed rule change, as modified by Amendment No. 1,⁵

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f).

consists of amendments to the Guide to the DTC Fee Schedule⁶ (“Fee Guide”) to (i) revise and/or consolidate certain Fees charged to Participants for certain settlement services,⁷ (ii) modify the existing Participants Fund Maintenance Fee (“Maintenance Fee”) and (iii) include a description of DTC’s current policy regarding the issuance of rebates to Participants, as described below.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 1

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change, as modified by Amendment No. 1, and discussed any comments it received on the proposed rule change, as modified by Amendment No. 1. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 1

1. Purpose

The proposed rule change, as modified by Amendment No. 1, would amend the Fee Guide to (i) revise and/or consolidate certain Fees charged to Participants for certain settlement services, (ii) modify the Maintenance Fee and (iii) include a description of DTC’s policy regarding the issuance of rebates to Participants, as described below.

Overview

DTC is a central securities depository, and as such, provides a central location in which Eligible Securities⁸ may be

(the “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

⁶ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/fee-guides/dtccfeeguide.pdf>.

⁷ Pursuant to Rule 2, Section 1, each Participant shall pay to DTC the compensation due it for services rendered to the Participant based on DTC’s fee schedules. See Rule 2, *supra* note 5.

⁸ Pursuant to Rule 5, Section 1, an Eligible Security shall only be a Security accepted by the Corporation, in its sole discretion, as an Eligible Security. The Corporation shall accept a Security as an Eligible Security only (a) upon a determination by the Corporation that it has the operational capability and can obtain information regarding the Security necessary to permit it to provide its services to Participants and Pledges when such Security is Deposited and (b) upon such inquiry, or based upon such criteria, as the Corporation may, in its sole discretion, determine from time to time. See Rule 5, *supra* note 5. See also, DTC Operational

immobilized, or through which Securities may be dematerialized, and interests, in the form of Security Entitlements,⁹ in those Securities reflected in Accounts maintained for Participants.¹⁰ DTC also provides for end-of-day net funds settlement relating to these Deliveries.¹¹

DTC operates a “low cost” pricing model and has in place procedures to control costs and to regularly review pricing levels against costs of operation. It reviews pricing levels against its costs of operation typically during the annual budget process. The budget is approved annually by the Board. DTC’s fees are cost-based plus a markup, as approved by the Board or management (pursuant to authority delegated by the Board), as applicable. This markup of “low margin” is applied to recover development costs and operating expenses, and to accumulate capital sufficient to meet regulatory and economic requirements.

After evaluation of DTC’s short- and long-term financial position in consideration of expected Participant activity, revenues, cost of funding, market volatility, and the financial markets more broadly, DTC has determined that it would be able to reduce the overall amount it collects from Participants through fees relating to its settlement services and still cover its costs and maintain the appropriate low margin above costs. In this regard, the proposed rule change, as modified by Amendment No. 1, would amend the Settlement Services section¹² of the Fee Guide to reduce and/or consolidate fees, as described below.

In addition, DTC proposes to (i) amend the Maintenance Fee¹³ and (ii) add a description of DTC’s current

Arrangements Necessary for Securities to Become and Remain Eligible for DTC Services (“OA”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

⁹ Pursuant to Rule 1, the term “Security Entitlement” has the meaning given to the term “security entitlement” in Section 8–102 of the New York Uniform Commercial Code. The interest of a Participant or Pledgee in a Security credited to its Account is a Security Entitlement. See Rule 1, *supra* note 5.

¹⁰ See also DTC Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, available at https://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf, at 5.

¹¹ See Rule 9(A), Rule 9(B), Rule 9(C) and Rule 9(D), *supra* note 5, and Settlement Service Guide (“Settlement Guide”), available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>, at 17–30.

¹² See Fee Guide, *supra* note 6, at 19–21.

¹³ DTC has provided confidential info to the Commission in connection with this proposed rule change to support the proposed fee changes.

policy regarding the issuance of fee rebates to Participants.

Fee Revisions and Consolidations for Certain Settlement Services

Fee Reduction for Deliver Orders and Consolidation of Reclaim Fees With the Deliver Order Fees

A Participant may submit an instruction (“Deliver Order”) to DTC to make a Delivery¹⁴ of Eligible Securities via book-entry to another Participant’s account.¹⁵ DTC reduces the Deliverer’s¹⁶ position and increases the Receiver’s¹⁷ position without the need to move physical certificates. Deliveries can be made Delivery Versus Payment¹⁸ or as a Free Delivery,¹⁹ depending on the applicable Participant’s delivery instructions provided in the Deliver Order.

A Participant is charged a fee, named in the Fee Guide as “Day Deliver Order (excluding stock loans),” (“Day Deliver Order Fee”) of 45 cents for a Deliver Order, except the charge is 17 cents for Deliver Orders submitted by the Participant for processing in the night cycle.²⁰ The latter fee, named the “Night

¹⁴ Pursuant to Rule 1, the term Delivery, as used with respect to a Security held in the form of a Security Entitlement on the books of DTC, means debiting the Security from an Account of the Deliverer and crediting the Security to an Account of the Receiver. A Delivery may be a Delivery Versus Payment or a Free Delivery, or both collectively, as the context may require. See Rule 1, *supra* note 5.

¹⁵ See Rule 9(B), *supra* note 5.

¹⁶ Pursuant to Rule 1, the term “Deliverer”, as used with respect to a Delivery of a Security, means the Person which Delivers the Security. See Rule 1, *supra* note 5.

¹⁷ Pursuant to Rule 1, the term “Receiver”, as used with respect to a Delivery of a Security, means the Person which receives the Security. See *id.*

¹⁸ Pursuant to Rule 1, the term “Delivery Versus Payment” means a Delivery against a settlement debit to the Account of the Receiver, as provided in Rule 9(A) and Rule 9(B) and as specified in the Procedures. See Rule 1, *supra* note 5.

¹⁹ Pursuant to Rule 1, the term “Free Delivery” means a Delivery free of any payment by the Receiver through the facilities of the Corporation, as provided in Rule 9(B) and as specified in the Procedures. See *id.*

²⁰ See Fee Guide, *supra* note 6, at 19. On the night before settlement day (“S–1”) DTC commences “night cycle” processing. During the night cycle, DTC operates a process (“Night Batch Process”) that utilizes a settlement processing algorithm capable of evaluating each Participant’s transaction obligations, available positions, transaction priorities and risk management controls. Specifically, at approximately 8:30 p.m. on S–1, DTC subjects all transactions eligible for processing to the Night Batch Process. The Night Batch Process runs “off-line” (*i.e.*, is not visible to Participants), allowing DTC to run multiple processing scenarios until the optimal processing scenario is identified. Once the optimal scenario is identified, the results are incorporated back into DTC’s core processing environment on a transaction-by-transaction basis prior to the start of daytime processing. Transactions that have satisfied DTC’s risk controls will be staged for settlement. However, as was the

Deliver Order” fee²¹ (“Night Deliver Order Fee”), is lower than the former because it is designed to encourage earlier submission of transactions by Participants, which results in more efficient settlement processing by increasing the volume of transactions processed in the night-cycle, which, in turn, enhances intraday settlement processing.²²

The Receiver of the Delivery is charged 11 cents, regardless of time, per receive. This fee is named in the Fee Guide as “Receive, regardless of time (excluding reclaims and stock loans and returns)”²³ (“Receive Fee”). The Participant may reclaim a Delivery that it receives, meaning it enters an instruction for the Delivered Security to be returned to the original Deliverer. The Deliverer and Receiver of a reclaim are each charged 26 cents, referred to in the Fee Guide under the name “Reclaims” (“Reclaim Fee”).

Pursuant to the proposed rule change, as modified by Amendment No. 1, DTC would reduce the Day Deliver Order Fee from 45 cents to 40 cents. The proposed

fee reflects an amount that would facilitate DTC’s ability, as discussed above, to reduce the overall fees DTC collects from Participants relating to its settlement services and still cover its costs and maintain the appropriate low margin above costs.

In addition, DTC would eliminate the Reclaim Fee and consolidate charges for reclaims into the Day Deliver Order Fee, Night Deliver Order Fee and Receive Fee, as applicable for the given reclaim activity. The fees as consolidated would replace the Reclaim Fee of 26 cents that, as mentioned above, is currently charged to the Deliverer and Receiver of a reclaim. As such, a Participant submitting reclaim instructions would incur the proposed Day Deliver Order Fee of 40 cents, except during the night cycle where it would incur the Night Deliver Order Fee of 17 cents. All receives relating to reclaims would cause the Receiver to be charged a Receive Fee of 11 cents per reclaim received. The proposed consolidation of the Reclaim Fee with the other fees relating to Deliver Orders and receives

as described above, would promote consistency and transparency within the Fee Guide by causing Deliveries and receives to be charged for at one fee amount for each Delivery and one fee amount for each receive, regardless of whether the related Delivery was instructed as an original Deliver Order or as a reclaim.

In light of the consolidation of the Reclaim Fee into the Day Deliver Order Fee, Night Deliver Order Fee and Receive Fee, as applicable for the given reclaim activity, the Fee Guide would be revised such that the three latter fees would be renamed to reflect the inclusion of reclaims and the Reclaim Fee would be removed.

As a result of the above described proposed changes, the Fee Guide entries for the Day Deliver Order Fee, Night Deliver Order Fee and Receive Fee would be revised and the Reclaim Fee would be deleted, as follows (Bold, italicized text indicates additions, Bold, strikethrough text indicates deletions):

FEE NAME	AMOUNT (\$)	CONDITIONS
Night Deliver Order (including reclaims)	0.17	Per item; charged to deliverer; applies to each DO submitted
Day deliver order (including reclaims; (excluding stock loans)	0.45 0.40	Per item; charged to deliverer; applies to each DO submitted
Receive, regardless of time (including reclaims; (excluding reclaims and stock loans and returns)	0.11	Per item; charged to receiver
Reclaims	0.26	Per-delivery or receive

case prior to this change, if a transaction cannot satisfy DTC’s control functions initially, then it will recycle throughout the day, continuously attempting to satisfy the controls until

approximately 3:10 p.m. for valued transactions and until 6:35 p.m. for free transactions. See Settlement Guide, *supra* note 11 at 5 and 68.

²¹ See *id.*

²² See Securities Exchange Act Release No. 84768 (December 10, 2018), 83 FR 64401 (December 14, 2018) (File No. SR-DTC-2018-011).

²³ See Fee Guide, *supra* note 6, at 19.

For clarity regarding the changes relating to the consolidation of the Reclaim Fee into other fees as described above, the following chart compares the charges Participants incur for a given reclaim pursuant to the current Fee Guide and the charge that would be incurred pursuant to the proposed rule change, as modified by Amendment No. 1.

Reclaim	Current fee name	Current fee amount	Proposed fee under which reclaim would be charged (proposed)	Proposed fee amount
Daytime Reclaim Delivery Instruction ...	Reclaims	26 cents	Day deliver order (including reclaims; excluding stock loans).	40 cents.
Night Delivery Reclaim Instruction	Reclaims	26 cents	Night deliver order (including reclaims)	17 cents.
Reclaim Receive (Regardless of Time)	Reclaims	26 cents	Receive, regardless of time (including reclaims; excluding stock loans and returns).	11 cents.

As a result of its review of pricing levels against costs of operation, DTC believes that the proposed fee changes would enable DTC to offset its cost and expense while generating a low margin.

Fee Reduction for Deliveries and Receives of Securities to and From CNS and Consolidation of Existing Fee for ACATS Deliveries and Receives With the Reduced Fee

Another important use of DTC book-entry transfer services is the interface of DTC with its affiliate National Securities Clearing Corporation (“NSCC”) for the processing of trades that are cleared and settled in the NSCC Continuous Net Settlement (“CNS”) system and are processed as Free Deliveries at DTC.²⁴ DTC also processes Free Deliveries as instructed by NSCC to DTC relating to

NSCC’s Automated Customer Account Transfer Service (“ACATS”).²⁵

A Participant is charged 16 cents for the Delivery of a Security to the NSCC CNS account at DTC (“CNS Account”) on the Participant’s behalf.²⁶ Likewise, the receiving Participant of a Security from the CNS Account is charged 16 cents for the Delivery of the Securities from the CNS Account to its account.²⁷ This fee is named in the Fee Guide as “Delivery to/from CNS.”²⁸

Separately, a Participant is charged 12 cents if it is Delivering or Receiving a Delivery from ACATS.²⁹ This fee is named in the Fee Guide as “Delivery to/from CNS ACAT.” This fee would be consolidated into a modified Delivery to/from CNS ACAT fee, as described below.

Specifically, pursuant to the proposed rule change, as modified by Amendment

No. 1, DTC would reduce the Delivery to/from CNS fee from 16 cents to 7 cents. In addition, the Delivery to/from CNS ACAT fee would be consolidated into the proposed reduced Delivery to/from CNS fee, and thus would reduce the charge for ACATS-related deliveries and receives from 12 cents to 7 cents. This proposed fee change reflects an amount that would facilitate DTC’s ability, as discussed above, to reduce the overall fees DTC collects from Participants relating to its settlement services and still cover its costs and maintain the appropriate low margin above costs.

As a result of the above described proposed changes, the text of the Fee Guide relating to these fees would be revised as follows (Bold, italicized text indicates additions, Bold, strikethrough text indicates deletions):

FEE NAME	AMOUNT (\$)	CONDITIONS
Delivery to/from CNS <u>(including ACATS)</u>	0.16 <u>0.07</u>	Per delivery or receive
Delivery to/from CNS ACAT	0.12	Per receive or delivery

As a result of its review of pricing levels against costs of operation, DTC believes that these proposed fee amounts would enable DTC to offset its cost and expense while generating a low margin.

Participants Fund Maintenance Fee

The Maintenance Fee was implemented in 2016 in order to (i) diversify DTC’s revenue sources, mitigating its dependence on revenues

driven by settlement volumes, and (ii) add a stable revenue source that would contribute to DTC’s operating margin by offsetting increasing costs and expenses.³⁰ The fee is charged to all Participants in proportion to the Participant’s Actual Participants Fund Deposit, as described below.

The Maintenance Fee is calculated monthly, in arrears, as the product of (A) 0.25 percent and (B) the average of the Participant’s Actual Participants

Fund Deposit as of the end of each day, for the month, multiplied by the number of days in that month and divided by 360. However, by its terms, the fee is waived if the monthly rate of return on DTC’s investment of the Participants Fund is less than 0.25 percent for the month (“Waiver Provision”).

The Waiver Provision was included for the benefit of Participants. DTC believed that if its monthly rate of return on the investment of the

²⁴ See Settlement Guide, *supra* note 11, at 15–17.

²⁵ See *id.* at 17.

²⁶ See Fee Guide, *supra* note 6, at 19.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Securities Exchange Act Release No. 78530 (August 10, 2016), 81 FR 54639 (August 16, 2016) (SR-DTC–2016–006).

Participants Fund was less than 0.25 percent, then Participants would likely be experiencing similarly low interest income on their deposits, including excess reserves, if applicable; in which case, DTC would waive the fee. Although this approach exposed DTC to the risk of not receiving revenue from the Maintenance Fee, DTC did not believe that such an exposure would be common, significant, or long-term.

Proposed Modification to the Maintenance Fee

Due to the coronavirus global pandemic and overall reaction by the financial markets, the rate of return on DTC's investment of the Participants Fund has fallen below 0.25 percent, triggering the Waiver Provision. However, application of the Waiver Provision in this instance has proven to be longer and more significant than what DTC originally contemplated when drafting the provision, resulting in a drop in DTC's revenues. If unaddressed, DTC's revenue could continue to deteriorate and negatively impact DTC's long-term financial health.

To address this issue, DTC is removing the Waiver Provision so that DTC will be able to generate revenue from the Maintenance Fee even if DTC's monthly rate of return on the investment of the Participants Fund is less than 0.25 percent. The ability to generate such revenue under such circumstances is important in helping DTC offset its costs and expenses in any economic environment. Additionally, the proposed change would help provide consistent pricing between DTC and its affiliate clearing agencies, NSCC and Fixed Income Clearing Corporation ("FICC"),³¹ as both NSCC and FICC have filed proposed rule changes concurrently with this filing that would result in the same calculation of their respective Maintenance Fee.³²

To effectuate the proposed change described above, the Maintenance Fee entry in the Settlement Services section of the DTC Fee Guide³³ would be updated to remove the Waiver Provision.

³¹ The Depository Trust & Clearing Corporation is the parent company of DTC, NSCC, and FICC. DTCC operates on a shared services model for DTC, NSCC, and FICC. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to DTC, NSCC, or FICC.

³² See NSCC File No. SR-NSCC-2020-018 and FICC File No. SR-FICC-2020-014 available at <https://www.dtcc.com/legal/sec-rule-filings>.

³³ See Fee Guide, *supra* note 6 at 21.

Rebate Policy

DTC is also proposing to amend the Fee Guide to include a description of its current policy regarding the issuance of rebates to Participants. DTC views its practice of providing a rebate to its Participants as a corporate function, and not related to its operation as a self-regulatory organization. A DTC rebate is essentially a return of the revenue that DTC collects through the fees it charges Participants for its services (as set forth in the Fee Guide). Rebates are not related to the amounts Participants deposit with DTC as their Participants Fund Deposit. The determination to provide a rebate is made at the corporation-level, based on a number of factors and considerations, as described below, and is not a separate determination made for each individual Participant.

Following the financial recession of 2008, DTC ceased providing such discounts in connection with the implementation of a financial strategy to strengthen its financial position and health. As a result of that strategy and improved financial markets, in 2019, DTC determined to reinstitute its practice of discounting Participants' invoices, in the form of a rebate, based on its financial performance. In connection with this decision, DTC is proposing to include a description of its current rebate practice in the Fee Guide. This proposed change would not change DTC's rebate practice but would provide Participants with transparency into this practice and the governance around rebates.

First, the proposed language would describe that DTC may provide Participants with a rebate of excess net income, and would define excess net income as income of either DTC or income related to one business line of DTC after application of expenses, capitalization costs, and applicable regulatory requirements. The language would also state that a rebate is discretionary, and DTC is not obligated to provide a rebate.

Second, the proposed language would state that a rebate would be approved by the Board. The proposed language would also state that, in determining if a rebate is appropriate, the Board would consider, one or more of the following, as appropriate: DTC's regulatory capital requirements,³⁴ anticipated expenses,

³⁴ DTC manages its general business risk by holding sufficient liquid net assets funded by equity to cover potential general business losses so it can continue operations and services as going concerns if those losses materialize, in compliance with the requirements of Rule 17Ad-22(e)(15). 17 CFR 240.17Ad-22(e)(15). DTC maintains a Clearing Agency Policy on Capital Requirements which

investment needs, anticipated future expenses with respect to improvement or maintenance of DTC's operations, cash balances, financial projections, and appropriate level of shareholders' equity.

Third, the proposed language would state that, if it determined to issue a rebate, the Board would set a rebate period and a rebate payment date, both of which are used to determine which Participants are eligible for a rebate. The proposed language would state that Participants that maintain their membership during all or a portion of the rebate period and on the rebate payment date are eligible for a rebate.

Finally, the proposed language would describe how rebates are applied to the invoices of eligible Participants. The proposed language would state that rebates are applied to all eligible Participants, on a pro-rata basis, based on such Participants' gross fees paid to DTC within the applicable rebate period, excluding pass-through fees and interest earned on Participants Fund Deposits. The proposed language would also state that rebates are applied to eligible Participants' invoices on the rebate payment date as either a reduction in fees or, if fees owed are lower than the allocated rebate amount, a payment of such difference. The proposed language would also note that rebate amounts may be adjusted for miscellaneous charges and discounts.

Participant Impact

The proposed rule change, as modified by Amendment No. 1, is expected to increase DTC's annual revenue by approximately \$12.7 million.

In general, DTC anticipates that the proposal would result in fee decreases for approximately 63% of impacted affiliated families of Participants and fee increases for approximately 37% of impacted affiliated families of Participants. Of the impacted affiliated families of Participants that may have their fees decrease, 25% of impacted affiliated families of Participants would have a decrease of less than \$1,000, 49% of impacted affiliated families of Participants would have a decrease of between \$1,000 and \$100,000, and 26% of impacted affiliated families of Participants would have a decrease greater than \$100,000.

defines the amount of capital it must maintain for this purpose and sets forth the manner in which this amount is calculated. See Securities Exchange Act Release No. 89361 (July 21, 2020), 85 FR 45263 (July 27, 2020) (SR-DTC-2020-010) (amending original filing).

Participant Outreach

DTC has conducted ongoing outreach to each Participant in order to provide them with notice of the proposed changes and the anticipated impact for the Participant. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

Implementation Timeframe

DTC would implement this proposal on January 1, 2021. As proposed, a legend would be added to the Fee Structure stating there are changes that have become effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include a date on which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed from the Fee Structure.

2. Statutory Basis

DTC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes the proposed changes to modify certain settlement service fees and the Maintenance Fee, as described above, are consistent with Section 17A(b)(3)(D) of the Act,³⁵ for the reasons described below. DTC believes that the proposed change to include a description of DTC's current policy regarding the issuance of rebates to Participants is consistent with Rule 17Ad-22(e)(23)(ii),³⁶ as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act requires, *inter alia*, that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among participants.³⁷ For the reasons set forth below, DTC believes that each of the proposed rule changes, as modified by Amendment No. 1, described above would provide for the equitable allocation of reasonable dues, fees, and other charges among Participants.

DTC believes the proposed rule change to (i) reduce the Day Deliver Order Fee and consolidate the Reclaim Fee into the Day Deliver Order Fee, Night Deliver Order Fee and Receive Fee, as applicable, and (ii) reduce the Delivery to/from CNS fee and consolidate the CNS ACAT-related fee

into the Delivery to/from CNS fee as described above, would provide for the equitable allocation of reasonable fees. Because the proposed change would not alter how these fees are charged to Participants, DTC believes that the fees would continue to be equitably allocated because they would continue to be charged based on volume of transaction activity for a given Participant. More specifically, as mentioned above, the Day Deliver Order Fee and the Night Deliver Order Fee are charged based on a Participant's volume of Deliveries during the applicable timeframes, as described above. As such, and as is currently the case, Participants that provide a greater number of Delivery instructions, or receive a greater number of Deliveries, would generally be subject to a higher overall charge for Deliveries and/or Receives, as applicable, based on volume of related transactions. Conversely, Participants that make fewer Deliveries and or receive few Deliveries would generally be a smaller overall charge for Deliveries and receives based on volume.

Similarly, DTC believes that the Day Deliver Order Fee, Night Deliver Order Fee, Receive Fee, and the Delivery to/from CNS fee would continue to be reasonable fees under the proposed change described above. As described above, the fee amounts as proposed reflect an amount that would facilitate DTC's ability, as discussed above, to reduce the overall fees DTC collects from Participants relating to its settlement services and still cover its costs and maintain an appropriate low margin above costs. For this reason, DTC believes that the proposed rule change to (i) reduce the Day Deliver Order Fee and consolidate the Reclaim Fee into the Day Deliver Order Fee, Night Deliver Order Fee and Receive Fee as applicable, and (ii) reduce the Delivery to/from CNS fee and consolidate the ACATS-related fee into the Delivery to/from CNS fee, as described above, would be reasonable fees charged by DTC for these services and is consistent with Section 17A(b)(3)(D) of the Act.³⁸

DTC believes that the proposed change to the Maintenance Fee is consistent with this provision of the Act.³⁹

As described above, the proposal would modify the Maintenance Fee to remove the Waiver Provision. Because the proposed change would not alter how the Maintenance Fee is currently allocated (*i.e.*, charged) to Participants,

DTC believes the fee would continue to be equitably allocated. More specifically, as mentioned above, the Maintenance Fee is and would continue to be charged to all Participants in proportion to the Participant's average monthly Actual Participants Fund Deposits. As such, and as is currently the case, Participants that make greater use of DTC's services would generally be subject to a larger Maintenance Fee because such Participants would typically be required to maintain larger Participants Fund deposits pursuant to the Rules.⁴⁰ Conversely, Participants that use DTC's services less would generally be subject to a smaller Maintenance Fee because such Participants would typically be required to maintain smaller Participants Fund deposits pursuant to the Rules.⁴¹ The described change would not adjust that allocation. For this reason, DTC believes the Maintenance Fee would continue to be equitably allocated among Participants.

Similarly, DTC believes that the Maintenance Fee would continue to be a reasonable fee under the proposed change described above. Although removal of the Waiver Provision means that Participants could be assessed a Maintenance Fee at times when they may not otherwise have been assessed the fee, the removal of the provision would enable DTC to collect needed revenue from the fee even in a difficult economic environment. Additionally, the proposed change would help establish consistent pricing between DTC and its affiliates, NSCC and FICC, regarding each of their respective Maintenance Fees, as concurrent proposals by NSCC and FICC would result in the same calculation.⁴² For this reason, DTC believes the Maintenance Fee would continue to be reasonable.

Based on the forgoing, DTC believes the proposed rule change relating to the modification of certain settlement service fees and the Maintenance Fee, as described above, is consistent with Section 17A(b)(3)(D).⁴³

Rule 17Ad-22(e)(23)(ii) under the Act requires that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.⁴⁴ The proposed change would add to the Fee Guide a

⁴⁰ See Rule 4, Rules, *supra* note 5.

⁴¹ *Id.*

⁴² See *supra* note 32.

⁴³ 15 U.S.C. 78q-1(b)(3)(D).

⁴⁴ 17 CFR 240.17Ad-22(e)(23)(ii).

³⁵ 15 U.S.C. 78q-1(b)(3)(D).

³⁶ 17 CFR 17Ad-22(e)(23)(ii).

³⁷ 15 U.S.C. 78q-1(b)(3)(D).

³⁸ *Id.*

³⁹ *Id.*

description of DTC's current rebate practice, which, when applicable, results in a reduction to the amount of fees a Participant owes to DTC. By updating the Fee Guide with a transparent description of DTC's rebate practice, the proposed change would provide Participants with sufficient information to evaluate the fees they may incur by participating in DTC. Therefore, DTC believes the proposed change would be consistent with the requirements of Rule 17Ad-22(e)(23)(ii).⁴⁵

(B) Clearing Agency's Statement on Burden on Competition Fee Revisions and Consolidations for Certain Settlement Services

DTC believes that the proposed rule change to reduce the Day Deliver Order Fees and the Delivery to/from CNS fee may promote competition among its Participants because the effect of the consolidations, as proposed, would result in a reduction of the applicable fees, as described above.

The consolidation of fees, as described above, except for the consolidation of the Reclaim Fee into the Day Deliver order fee for applicable activity (reclaims that do not occur in the night cycle), may promote competition among Participants because the effect of the consolidations, as proposed, would result in a reduction of the applicable fees, as described above.

The proposed change to consolidate the Reclaim Fee into the Day Deliver Order Fee for applicable activity (reclaims that do not occur in the night cycle) may present a competitive burden among Participants because this change could increase the fees of those Participants that instruct a reclaim in that a Reclaim that would be charged at the amount of 26 cents under the current Fee Schedule would be charged at 40 cents per reclaim under the proposal. DTC does not believe the proposed change in and of itself would mean that the burden on competition among Participants is significant. This is because even though the amount of the fee increase may seem significant, DTC believes the increase in fees would similarly affect all Participants that utilize DTC's services and be reflective of each Participant's individual activity at DTC, and therefore the burden on competition would not be significant. Regardless of whether the burden on competition is deemed significant, DTC believes any burden that is created by the proposed change would be necessary and appropriate in

furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁴⁶

The burden would be necessary because a Reclaim is a functional equivalent of a Deliver Order except that it represents a Delivery to return Securities rather than representing the original Delivery of Securities, and therefore should be charged at the same rate as a Deliver Order. The burden would be appropriate because a reclaim is the functional equivalent of a Delivery and DTC believes a reclaim should now be priced the same as other Deliveries given the capability of a Receiver via the Receiver Authorized Delivery ("RAD") functionality to return Deliveries prior to processing and a reduced need for Receivers to rely on reclaims to return Deliveries to its Account, as described below. In this regard, RAD enables a Receiver of valued deliveries of securities to manage which deliveries to accept, or to reject, prior to further processing by DTC.⁴⁷ Specifically, whereas prior to a series of earlier rule changes, transactions below an established dollar value could bypass the RAD control, today all valued transactions are subject to RAD, whereby a Participant can prevent any such Deliveries to its account.⁴⁸ Therefore, a Receiver is able to approve all Deliveries to its account through RAD and there is less likelihood that a Participant would need to rely on reclaims to remedy an errant instruction by a counterparty to make a Delivery to its account.

Maintenance Fee

DTC does not believe that the proposed change to the Maintenance Fee would have an impact on competition among its Participants. As described above, the Maintenance Fee is charged ratably based on Participants' use of DTC's services, as reflected in Participants' Actual Participant Fund Deposits. Thus, the fee is designed to be reflective of each Participant's individual activity at DTC. Nevertheless, if removal of the Waiver Position, and the resulting imposition of the Maintenance Fee at a time when a Participant would not have otherwise been assessed the fee, would create a competitive burden for a Participant, DTC believes such a burden would not

be significant, given that the amount assessed would be the same but for application of the Waiver Provision. Moreover, DTC believes that any such burden would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁴⁹

The burden would be necessary because it is essential that DTC offset some of its costs and expenses with stable revenue generated from the Maintenance Fee, regardless of the economic environment. As described above, not doing so could adversely affect DTC's financial health. The burden would be appropriate because, as described above, the Maintenance Fee is calculated, using a balanced formula, to assess a fee that is reflective of the Participant's use of DTC's services, so that DTC can defray some of its costs and expenses in providing those services.

Rebate Policy

DTC does not believe the proposed change to describe its current rebate practice would have any impact, or impose any burden, on competition among its Participants. As described above, this proposed rule change, as modified by Amendment No. 1, would include a description of DTC's current rebate practice in the Fee Guide. As described in the proposed language, under its current practice, rebates are allocated to eligible Participants pro-rata based on such Participants' gross fees paid to DTC within the applicable rebate period. Therefore, the current practice is applied equally to all eligible Participants. The proposed change to provide Participants with transparency into this practice would not cause any increase or decrease in the rebates Participants may receive. Therefore, this proposed rule change, as modified by Amendment No. 1, would not have any impact, or impose any burden, on competition among Participants.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, as Modified by Amendment No. 1, Received From Members, Participants, or Others

Written comments relating to this proposed rule change as modified by Amendment No. 1, have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

⁴⁶ 15 U.S.C. 78q-1(b)(3)(I).

⁴⁷ See Settlement Guide, *supra* note 11 at 5 and 54.

⁴⁸ See Securities Exchange Act Release Nos. 72576 (July 9, 2014), 79 FR 41355 (July 15, 2014) (SR-DTC-2014-06); and 73804 (December 10, 2014), 79 FR 74796 (December 16, 2014) (SR-DTC-2014-010).

⁴⁹ 15 U.S.C. 78q-1(b)(3)(I).

⁴⁵ *Id.*

III. Date of Effectiveness of the Proposed Rule Change, as Modified by Amendment No. 1, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)⁵⁰ of the Act and paragraph (f)⁵¹ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, as modified by Amendment No. 1, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-DTC-2020-014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to File Number SR-DTC-2020-014. 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, as modified by Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Amendment No. 1, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2020-014 and should be submitted on or before December 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵²

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-26787 Filed 12-4-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90544; File No. SR-FICC-2020-014]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Clearance Maintenance Fee, Reduce the End of Day Position Fee of the Government Securities Division, and Describe the Current Rebate Policy

December 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 16, 2020, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On November 30, 2020, FICC filed Amendment No. 1 to the proposed rule change, which revised a portion of the rule text and corresponding description in the notice relating to FICC's current policy regarding the issuance of rebates to its members. FICC filed the proposed rule change, as modified by Amendment No. 1, pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴

⁵² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

The proposed rule change, as modified by Amendment No. 1 is hereinafter referred to as the "Proposed Rule Change." The Proposed Rule Change is described in Items I, II, and III below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed Rule Change consists of modifications to FICC's Mortgage-Backed Securities Division ("MBSD") Clearing Rules ("MBSD Rules") and Government Securities Division ("GSD") Rulebook ("GSD Rules" and together with the MBSD Rules, the "Rules") in order to (i) modify the respective Clearing Fund Maintenance Fee ("Maintenance Fee") of GSD and MBSD, (ii) reduce the end of day position fee of GSD, and (iii) include a description of FICC's current policy regarding the issuance of rebates to GSD Members and MBSD Clearing Members, as described in greater detail below.⁵

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Proposed Rule Change and discussed any comments it received on the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FICC is proposing to amend the MBSD Rules and the GSD Rules in order to (i) modify the respective Maintenance Fee of GSD and MBSD, (ii) reduce the end of day position fee of GSD, and (iii) include a description of FICC's current policy regarding the issuance of rebates to GSD Members and MBSD Clearing Members, as described in greater detail below.

⁵ Capitalized terms not defined herein are defined in the GSD Rules and the MBSD Rules, as applicable, available at <http://www.dtcc.com/legal/rules-and-procedures>.

⁵⁰ 15 U.S.C. 78s(b)(3)(A).

⁵¹ 17 CFR 240.19b-4(f).

(i) Background

FICC operates a cost plus low margin pricing model and has in place procedures to control costs and to regularly review pricing levels against costs of operation. It reviews pricing levels against its costs of operation typically during the annual budget process. The budget is approved annually by the Board. FICC's fees are cost-based plus a markup as approved by the Board or management (pursuant to authority delegated by the Board), as applicable. This markup or "low margin" is applied to recover development costs and operating expenses and to accumulate capital sufficient to meet regulatory and economic requirements.

a. Maintenance Fee

FICC implemented the Maintenance Fee in 2016 in order to (i) diversify FICC's revenue sources, mitigating its dependence on revenues driven by settlement volumes, and (ii) add a stable revenue source that would contribute to FICC's operating margin by offsetting increasing costs and expenses.⁶ The Maintenance Fees for MBSD and GSD are effectively the same and charged to MBSD Clearing Members and GSD Netting Members (collectively, "Members") in proportion to the Member's deposit in their respective MBSD or GSD Clearing Fund (collectively, "Clearing Fund"), as described below.

The Maintenance Fee is calculated monthly, in arrears, as the product of (A) 0.25 percent and (B) the average of the Member's cash deposit balance in the Clearing Fund as of the end of each day, for the month, multiplied by the number of days in that month and divided by 360. However, by its terms, the fee is waived if the monthly rate of return on FICC's investment of the cash deposit balance of the Clearing Fund is less than 0.25 percent for the month ("Waiver Provision").

The Waiver Provision was included for the benefit of Members. FICC believed that if its monthly rate of return on the investment of the cash deposit balance in the Clearing Fund was less than 0.25 percent, then Members would likely be experiencing similarly low interest income on their deposits, including excess reserves, if applicable; in which case, FICC would waive the fee. Although this approach exposed FICC to the risk of not receiving revenue from the Maintenance Fee, FICC did not believe that such an

exposure would be common, significant, or long-term.

b. End of Day Position Fee

Currently, the Fee Structure of the GSD Rules includes the end of day position fee, which is a position management fee. FICC implemented the end of day position fee in 2018.⁷ The current end of day position fee is \$0.115 per million par value. This end of day position fee is calculated for a GSD Member each Business Day based on the end of day gross position of the GSD Member (including positions of any GSD Non-Member that the GSD Member is clearing for) that Business Day. FICC determines the end of day gross position of a GSD Member by netting the par value of all compared buy/sell transactions, Repo Transactions, and unsettled obligations of the GSD Member (including any such activity submitted by the GSD Member for a GSD Non-Member that the GSD Member is clearing for) at the end of the Business Day by CUSIP Number and taking the sum of the absolute par value of each such CUSIP Number.

The end of day position fee aims to align pricing with the costs of services provided by FICC because the end of day position fee is driven by position management. The end of day position fee aims to reflect the costs associated with end of day processing, overnight position management, and various risk and operational activities required to assure the ability of FICC to continue to provide a dependable, stable and efficient clearing and settlement service for GSD Members.

c. Rebate

FICC is also proposing to amend Section XII of the Fee Structure of the GSD Rules, the Important Note under Section I of the FICC MBSD Schedule of Charges Broker Account Group ("Schedule of Charges Broker Account Group") of the MBSD Rules and Section I of the FICC MSBD Schedule of Charges Dealer Account Group ("Schedule of Charges Dealer Account Group") of the MBSD Rules. The Proposed Rule Change would replace a current description of FICC's policy on providing GSD Members and MBSD Clearing Members with a discount or surcharge with a description of its current policy regarding the issuance of rebates to GSD Members and MBSD Clearing Members. In connection with this change, the Proposed Rule Change would also change the title of Section

XII of the Fee Structure of the GSD Rules from "Capital Base, Pricing and Rebate Policy" to "Rebate Policy" to better describe the policy described in this section.

(ii) Proposed Changes

a. Proposed Modification to the Maintenance Fee

Due to the coronavirus global pandemic and overall reaction by the financial markets, the rate of return on FICC's investment of the cash deposit balance in the Clearing Fund has fallen below 0.25 percent, triggering the Waiver Provision. However, application of the Waiver Provision in this instance has proven to be longer and more significant than what FICC originally contemplated when drafting the provision, resulting in a drop in FICC's revenues. If unaddressed, FICC's revenue could continue to deteriorate and negatively impact FICC's long-term financial health.

To address this issue, FICC is removing the Waiver Provision so that FICC would be able to generate revenue from the Maintenance Fee even if FICC's monthly rate of return on the investment of the cash deposit balance in the Clearing Fund is less than 0.25 percent. The ability to generate such revenue under such circumstances is important in helping FICC offset its costs and expenses in many economic environments. Additionally, the Proposed Rule Change would help provide consistent pricing between FICC and its affiliate clearing agencies, National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC"),⁸ as both NSCC and DTC have filed proposed rule changes concurrently with this filing that would result in the same calculation of their respective Maintenance Fee.⁹

To effectuate the proposed change described above, the Waiver Provision would be removed from (i) the Maintenance Fee in Section I (Fees) of the Schedule of Charges Broker Account Group in the MBSD Rules, (ii) the Maintenance Fee of Section 1 (Fees) of the Schedule of Charges Dealer Account Group in the MBSD Rules, and (iii) Section XIII (Clearing Fund

⁸ The Depository Trust & Clearing Corporation ("DTCC") is the parent company of DTC, NSCC, and FICC. DTCC operates on a shared services model for DTC, NSCC, and FICC. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to DTC, NSCC, or FICC.

⁹ See File No. SR-DTC-2020-014 and File No. SR-NSCC-2020-018 available at <https://www.dtcc.com/legal/sec-rule-filings>.

⁶ Securities Exchange Act Release No. 78529 (August 10, 2016), 81 FR 54626 (August 16, 2016) (SR-FICC-2016-004).

⁷ Securities Exchange Act Release No. 83401 (June 8, 2018), 83 FR 27812 (June 14, 2018) (SR-FICC-2018-003).

Maintenance Fee) of the Fee Structure in the GSD Rules.

b. Proposed Reduction of End of Day Position Fee

FICC is proposing to reduce the end of day position fee from \$0.115 per million par value to \$0.105 per million par value.

FICC believes that this proposed reduction in the end of day position fee would be consistent with FICC's cost plus low-margin pricing model. As described above, FICC regularly reviews pricing levels against its costs of operation typically during the annual budget process. FICC determined during the 2020 annual budget process that the proposed reduction in the end of day position fee would help better align costs to revenue and be consistent with its cost plus low-margin pricing model. In addition, FICC believes a proposed reduction in one fee (rather than in a number of fees) is a more simple and clear way for FICC to continue to generate sufficient revenues to cover its operating costs plus generate a low net income operating margin (*i.e.*, to be consistent with its pricing model).

Furthermore, FICC believes that, with the proposed reduction in the end of day position fee, all GSD Members would benefit from a lower end of day position fee while, as described above, still enabling FICC to continue to generate sufficient revenues to cover its operating costs plus generate a low net income operating margin. As described above, because the end of day position fee is calculated based on the gross position of the GSD Members, GSD Members that generate higher levels of activity and make greater use of FICC's services would generally be subject to a higher overall amount in terms of the end of day position fee (similar to the Maintenance Fee described above). Conversely, GSD Members that generate lower levels of activity and use FICC's services less would generally be subject to smaller overall amount in terms of their end of day position fee. Therefore, some GSD Members may see a greater reduction in the overall amount of the fee given that it is based on the level of their activity. The described change would not adjust that allocation.

To effectuate the proposed change described above, FICC would revise the end of day position fee from \$0.115 per million par value to \$0.105 per million par value in Section II.B of the Fee Structure of the GSD Rules.

c. Proposed Changes to the Rebate Policy

FICC is also proposing to amend Section XII of the Fee Structure of the

GSD Rules, the Important Note under Section I of the Schedule of Charges Broker Account Group of the MBSD Rules and the Important Note under Section I of the Schedule of Charges Dealer Account Group of the MBSD Rules. The Proposed Rule Change would replace a current description of FICC's policy on providing GSD Members and MBSD Clearing Members with a discount or surcharge with a description of its current policy regarding the issuance of rebates to GSD Members and MBSD Clearing Members.

Currently, Section XII of the Fee Structure of the GSD Rules, the Important Note under Section I of the Schedule of Charges Broker Account Group of the MBSD Rules and the Important Note under Section I of the Schedule of Charges Dealer Account Group of the MBSD Rules all include an outdated description of FICC's policy to adjust GSD Members' and MBSD Clearing Members' invoices based on FICC's revenues. This description states that FICC may adjust invoices down in the form of a discount or up in the form of a surcharge, based on its revenues. FICC did historically provide GSD Members and MBSD Clearing Members with a discount on their invoices, but it does not have any record of adjusting invoices up, in the form of a surcharge, in the past.

FICC views its practice of providing a rebate to GSD Members and MBSD Clearing Members as a corporate function, and not related to its operation as a self-regulatory organization. An FICC rebate is essentially a return of the revenue that FICC collects through the fees it charges GSD Members and MBSD Clearing Members for its services (as set forth in the Fee Structure of the GSD Rules, the Schedule of Charges Broker Account Group of the MBSD Rules and Schedule of Charges Dealer Account Group of the MBSD Rules). Rebates are not related to the amounts GSD Members and MBSD Clearing Members deposit with FICC as their Required Fund Deposits, which are made up of risk-based margin charges. The determination to provide a rebate is made at the corporation-level, based on a number of factors and considerations, as described below, and is not a separate determination made for each individual GSD Member and MBSD Clearing Member.

Following the financial recession of 2008, FICC ceased providing such discounts in connection with the implementation of a financial strategy to strengthen its financial position and health. As a result of that strategy and improved financial markets, in 2019, FICC determined to reinstitute its

practice of discounting GSD Members' and MBSD Clearing Members' invoices, in the form of a rebate, based on its financial performance. In connection with this decision, FICC is proposing to replace the language regarding adjustment of invoices in Section XII of the Fee Structure of the GSD Rules, the Important Note under Section I of the Schedule of Charges Broker Account Group of the MBSD Rules and the Important Note under Section I of the Schedule of Charges Dealer Account Group of the MBSD Rules to describe its current rebate practice. This proposed change would not change FICC's current rebate practice but would provide GSD Members and MBSD Clearing Members with transparency into this practice and the governance around rebates.

First, the Proposed Rule Change would change the title of Section XII of the Fee Structure of the GSD Rules from "Capital Base, Pricing and Rebate Policy" to "Rebate Policy" to better describe the policy described in this section.

Second, the proposed language would describe that FICC may provide GSD Members and MBSD Clearing Members with a rebate of excess net income, and would define excess net income as income of either FICC or related to one business line of FICC after application of expenses, capitalization costs, and applicable regulatory requirements. The language would also state that a rebate is discretionary, to make it clear that FICC is not obligated to provide a rebate.

Third, the proposed language would state that a rebate would be approved by the Board. The proposed language would also state that, in determining whether a rebate is appropriate, the Board would consider one or more of the following, as appropriate: FICC's regulatory capital requirements,¹⁰ anticipated expenses, investment needs, anticipated future expenses with respect to improvement or maintenance of FICC's operations, cash balances, financial projections, and appropriate level of shareholders' equity.

Fourth, the proposed language would state that, if the Board determined to

¹⁰ FICC manages its general business risk by holding sufficient liquid net assets funded by equity to cover potential general business losses so it can continue operations and services as going concerns if those losses materialize, in compliance with the requirements of Rule 17Ad-22(e)(15). 17 CFR 240.17Ad-22(e)(15). FICC maintains a Clearing Agency Policy on Capital Requirements which defines the amount of capital it must maintain for this purpose and sets forth the manner in which this amount is calculated. See Securities Exchange Act Release No. 89363 (July 21, 2020), 85 FR 45276 (July 27, 2020) (SR-FICC-2020-008) (amending original filing).

issue a rebate, it would set a rebate period and a rebate payment date, both of which are used to determine which GSD Members and MBSD Clearing Members are eligible for a rebate. The proposed language would state that GSD Members and MBSD Clearing Members that maintain their membership during all or a portion of the rebate period and on the rebate payment date are eligible for a rebate.

Finally, the proposed language would describe how rebates are applied to the invoices of eligible GSD Members and MBSD Clearing Members. The proposed language would state that rebates are applied to all eligible GSD Members and MBSD Clearing Members on a pro-rata basis based on such GSD Members' and MBSD Clearing Members' gross fees paid to FICC within the applicable rebate period, excluding pass-through fees and interest earned on cash deposits to the Clearing Fund. The proposed language would also state that rebates are applied to eligible Members' invoices on the rebate payment date as either a reduction in fees owed or, if fees owed are lower than the allocated rebate amount, a payment of such difference. The proposed language would also note that rebate amounts may be adjusted for miscellaneous charges and discounts.

(iii) Expected Member Impact

The Proposed Rule Change is expected to increase FICC's annual revenue by approximately \$14.5 million.

In general, FICC anticipates that the proposal would result in fee decreases for approximately 27% of impacted affiliated family of Members and fee increases for approximately 73% of impacted affiliated family of Members. Of the impacted affiliated family of Members that may have their fees decrease, 100% of those affiliated family of Members would have a decrease between \$1,000 and \$100,000 per year. Of the impacted affiliated family of Members that may have their fees increase, approximately 2% of those impacted affiliated family of Members would have an increase of less than \$1,000 per year, approximately 60% of those impacted affiliated family of Members would have an increase of \$1,000 to \$100,000 per year, approximately 32% of those impacted affiliated family of members would have an increase of \$100,000 to \$1 million per year, and approximately 6% of those impacted affiliated family of Members would have an increase of \$1 million or greater per year.

(iv) Member Outreach

FICC has conducted ongoing outreach to each Member in order to provide them with notice of the proposed changes and the anticipated impact for the Member. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

Implementation Timeframe

FICC would implement this proposal on January 1, 2021. As proposed, a legend would be added to the Fee Structure of the GSD Rules, the Schedule of Charges Broker Account Group of the MBSD Rules and the Schedule of Charges Dealer Account Group of the MBSD Rules, as appropriate, stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend would include the date on which such changes would be implemented and the file number of this proposal, and state that once this proposal is implemented, the legend would automatically be removed.

2. Statutory Basis

FICC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC believes the proposed changes to (i) modify the respective Maintenance Fee of GSD and MBSD and (ii) reduce the end of day position fee of GSD are consistent with Section 17A(b)(3)(D) of the Act¹¹ and the Proposed Rule Change to include a description of FICC's current policy regarding the issuance of rebates to GSD Members and MBSD Clearing Members is consistent with Rule 17Ad-22(e)(23)(ii),¹² as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency, such as FICC, provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.¹³ FICC believes that the proposed changes to the Maintenance Fee and the end of day position fee are consistent with this provision of the Act.¹⁴

As described above, the proposal would modify the Maintenance Fee to remove the Waiver Provision. Because

the proposed change would not alter how the Maintenance Fee is currently allocated (*i.e.*, charged) to Members, FICC believes the fee would continue to be equitably allocated. More specifically, as mentioned above, the Maintenance Fee is and would continue to be charged to all Members in proportion to the Member's cash deposit balance in the Clearing Fund. As such, and as is currently the case, Members that make greater use of FICC's services would generally be subject to a larger Maintenance Fee because such Member would typically be required to maintain a larger Clearing Fund deposit pursuant to the respective MBSD Rules or GSD Rules.¹⁵ Conversely, Members that use FICC's services less would generally be subject to a smaller Maintenance Fee because such Members would typically be required to maintain a smaller Clearing Fund deposit pursuant to the respective MBSD Rules or GSD Rules.¹⁶ The described change would not adjust that allocation. For this reason, FICC believes the Maintenance Fee would continue to be equitably allocated among Members.

Similarly, FICC believes that the Maintenance Fee would continue to be a reasonable fee under the proposed change described above. Although removal of the Waiver Provision means that Members could be assessed a Maintenance Fee at times when they may not otherwise have been assessed the fee, the removal of the provision would enable FICC to collect needed revenue from the fee even in a difficult economic environment. Additionally, the proposed change would help establish consistent pricing between FICC and its affiliates, NSCC and DTC, regarding each of their respective Maintenance Fees, as concurrent proposals by NSCC and DTC would result in the same calculation.¹⁷ For this reason, FICC believes the Maintenance Fee would continue to be reasonable.

In addition, FICC believes the proposed change to reduce the end of day position fee in the GSD Rules is consistent with Section 17A(b)(3)(D).¹⁸ The proposal would provide for the equitable allocation of fees among participants because the proposal would apply to all participants, such that all Members would be subject to this proposed reduction of the end of the day position fee following the implementation of the proposed change. The end of day position fee is and

¹⁵ See Rule 4, GSD Rules and Rule 4, MBSD Rules, *supra* note 5.

¹⁶ *Id.*

¹⁷ See *supra* note 9.

¹⁸ 15 U.S.C. 78q-1(b)(3)(D).

¹¹ 15 U.S.C. 78q-1(b)(3)(D).

¹² 17 CFR.17Ad-22(e)(23)(ii).

¹³ 15 U.S.C. 78q-1(b)(3)(D).

¹⁴ *Id.*

would continue to be charged to all GSD Members.

Because these proposed changes would not alter how the end of day position fee is currently allocated (*i.e.*, charged) to Members, FICC believes these fees would continue to be equitably allocated. More specifically, as mentioned above, the end of day position fee is and would continue to be charged to all GSD Members based on their end of day gross positions. As such, and is currently the case, GSD Members that have more activity and make greater use of FICC's services would generally be subject to a greater overall amount in terms of their end of day position fee. Conversely, GSD Members that generate lower levels of activity and use FICC's services less would generally be subject to smaller overall amount in terms of their end of day position fee. For this reason, FICC believes the end of day position fee would continue to be equitably allocated among GSD Members.

Similarly, FICC believes that the end of day position fee would continue to be a reasonable fee under the proposed change described above. The proposed reduction of the end of the day position fee would be consistent with FICC's cost plus low-margin pricing model. With the proposed reduction of the end of day position fee, FICC believes it would still be able to continue to generate sufficient revenues to cover its operating costs plus generate a low net income operating margin while also enabling all GSD Members to benefit from a lower end of day position fee. For this reason, FICC believes the end of day position fee would continue to be reasonable.

Based on the forgoing, FICC believes the Proposed Rule Change is consistent with Section 17A(b)(3)(D).¹⁹

Rule 17Ad-22(e)(23)(ii) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.²⁰ The Proposed Rule Change would replace an outdated description of FICC's past practice of adjusting GSD Members' and MBSB Clearing Members' invoices, with an updated description of its current rebate practice, which, when applicable, results in a reduction to the amount of fees a GSD Member and MBSB Clearing Member owes to FICC. By updating Section XII of the Fee Structure of the GSD Rules, the Important Note under

Section I of the Schedule of Charges Broker Account Group of the MBSB Rules and the Important Note under Section I of the Schedule of Charges Dealer Account Group of the MBSB Rules with a clear, transparent description of FICC's current rebate practice, the Proposed Rule Change would provide GSD Members and MBSB Clearing Members with sufficient information to evaluate the fees they may incur by participating in FICC. Therefore, FICC believes the Proposed Rule Change would be consistent with the requirements of Rule 17Ad-22(e)(23)(ii).²¹

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the Proposed Rule Changes to (i) modify the Maintenance Fee of GSD and MBSB and (ii) update and enhance the transparency of FICC's policy regarding the issuance of rebates to GSD Members and MBSB Clearing Members in the GSD Rules and MBSB Rules would have any impact, or impose any burden, on competition among its Members for the reasons described below. FICC believes that the proposed change to reduce the end of day position fee could promote competition among GSD Members for the reasons described below.

FICC does not believe that the proposed change to the Maintenance Fee would have an impact on competition among its Members. As described above, the Maintenance Fee is charged ratably based on Members' use of FICC's services, as reflected in Members' cash deposit balances to the Clearing Fund. Thus, the fee is designed to be reflective of each Member's individual activity at FICC. Nevertheless, if removal of the Waiver Provision, and the resulting imposition of the Maintenance Fee at a time when a Member would not have otherwise been assessed the fee, would create a competitive burden for a Member, FICC believes such a burden would not be significant, given that the amount assessed would be the same but for application of the Waiver Provision. Moreover, FICC believes that any such burden would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.²²

The burden would be necessary because it is essential that FICC offset some of its costs and expenses with stable revenue generated from the Maintenance Fee, regardless of the economic environment. As described

above, not doing so could adversely affect FICC's financial health. The burden would be appropriate because, as described above, the Maintenance Fee is calculated, using a balanced formula, to assess a fee that is reflective of the Member's use of FICC's services, so that FICC can defray some of its costs and expenses in providing those services.

FICC believes that the proposed reduction of the end of day position fee could promote competition among GSD Members by potentially reducing GSD Members' operating costs. As described above, the proposed reduction of the end of day position fee would apply equally to all GSD Members.

In addition, FICC does not believe the Proposed Rule Change to describe its current rebate practice would have any impact, or impose any burden, on competition among its Members. As described above, this Proposed Rule Change would replace information currently in Section XII of the Fee Structure of the GSD Rules, the Important Note under Section I of the Schedule of Charges Broker Account Group of the MBSB Rules and Section I of the Schedule of Charges Dealer Account Group of the MBSB Rules, with a description of FICC's current rebate practice. As described in the proposed language, under its current practice, rebates are allocated to eligible Members on a pro-rata basis based on such Members' gross fees paid to FICC within the applicable rebate period. Therefore, the current practice is applied equally to all eligible Members. The Proposed Rule Change to provide Members with transparency into this practice would not cause any increase or decrease in the rebates Members may receive. Therefore, this Proposed Rule Change would not have any impact, or impose any burden, on competition among Members.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. FICC will notify the Commission of any written comments received by FICC.

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)²³ of the Act and paragraph

¹⁹ *Id.*

²⁰ 17 CFR 240.17Ad-22(e)(23)(ii).

²¹ *Id.*

²² 15 U.S.C. 78q-1(b)(3)(I).

²³ 15 U.S.C. 78s(b)(3)(A).

(f)²⁴ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the Proposed Rule Change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Proposed Rule Change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FICC-2020-014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to File Number SR-FICC-2020-014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that

we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2020-014 and should be submitted on or before December 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-26786 Filed 12-4-20; 8:45 am]

BILLING CODE 8011-01-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2020-0026]

Privacy Act of 1974; System of Records

AGENCY: Office of the General Counsel and Office of Hearings Operations, Social Security Administration (SSA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act, we are issuing public notice of our intent to modify an existing system of records entitled, Representative Disqualification, Suspension, and Non-Recognition File (60-0219), last published on May 10, 2010. This notice publishes details of the modified system as set forth below under the caption, **SUPPLEMENTARY INFORMATION.**

DATES: The system of records notice (SORN) is applicable upon its publication in today's **Federal Register**, with the exception of the new routine uses, which are effective January 6, 2021. We invite public comment on the routine uses or other aspects of this SORN. In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), we are providing the public a 30-day period in which to submit comments. Therefore, please submit any comments by January 6, 2021.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G-401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, or through the Federal e-Rulemaking Portal at <http://www.regulations.gov>. Please reference docket number SSA-2020-

0026. All comments we receive will be available for public inspection at the above address and we will post them to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G-401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, telephone: (410) 966-5855, email: tristin.dorsey@ssa.gov.

SUPPLEMENTARY INFORMATION: We are modifying the system manager and location to clarify the offices responsible for maintaining the system and the locations of the records within the system. We are clarifying that only the Office of the General Counsel (OGC) may make disclosures to the agencies and entities listed in routine uses Nos. 2, 3, and 4.

In addition, we are expanding routine use No. 4 to include that OGC may make disclosures to the subject of an investigation or his or her legal counsel, for the purposes of identifying the representative of record, explaining the purpose of the request, and identifying and requesting information SSA needs to facilitate the investigation of, or litigation against, a representative. We are clarifying the language in routine use Nos. 8 and 17 for easier reading. We are also clarifying that we will retrieve records by claimant identification number and other claimant information that is relevant to the investigation.

Lastly, we are modifying the notice throughout to correct miscellaneous stylistic formatting and typographical errors of the previously published notice, and to ensure the language reads consistently across multiple systems. We are republishing the entire notice for ease of reference.

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on this modified system of records.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

SYSTEM NAME AND NUMBER:

Representative Disqualification, Suspension, and Non-Recognition Information File, 60-0219.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Social Security Administration, Office of the General Counsel, Office of General Law, 6401 Security Boulevard,

²⁴ 17 CFR 240.19b-4(f).

²⁵ 17 CFR 200.30-3(a)(12).

Room 617 Altmeyer Building,
Baltimore, Maryland 21235-6401.

Office of the Regional Chief Counsels
(see Appendix C, #5 for address
information)

Social Security Administration, Office
of Hearings Operations, Office of the
Chief Administrative Law Judge, Suite
1608, One Skyline Tower, 5107
Leesburg Pike, Falls Church, VA 22041.

Office of Hearing Operations regional
offices (see Appendix F for address
information)

SYSTEM MANAGER(S):

Social Security Administration,
Associate General Counsel for General
Law, Office of the General Counsel,
Office of General Law, 6401 Security
Boulevard, Room 617 Altmeyer
Building, Baltimore, MD 21235-6401,
(410) 966-5855.

Social Security Administration,
Regional Chief Counsels (see Appendix
C, #5 for address information), (410)
966-5855.

Social Security Administration, Office
of Hearings Operations, Chief
Administrative Law Judge, Suite 1608,
One Skyline Tower, 5107 Leesburg Pike,
Falls Church, VA 22041, (410) 966-
5855.

Social Security Administration,
Regional Chief Administrative Law
Judges (see Appendix F for address
information), (410) 966-5855.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 206(a) and 1631(d)(2) of the
Social Security Act, as amended, and
SSA Regulations (20 CFR part 404,
subpart R and Part 416, Subpart O).

PURPOSE(S) OF THE SYSTEM:

The information in this system
provides real-time access to information
key to the Office of Hearings Operations'
business process for referring a
representative to the Office of the
General Counsel (OGC) for investigation
of alleged misconduct or lack of
qualification. The information in this
system also includes information related
to OGC's business process for seeking
the disqualification or suspension of
representatives. For example, the
records provide timely access to
information we need to make decisions
about whether persons meet our
qualifications to serve as representatives
and whether violations of the provisions
of the Social Security Act or regulations
relating to representation have occurred.

Information in this system also
enables us to more efficiently
investigate alleged administrative or
criminal violations; take action against
representatives; respond to the Appeals
Council when a representative has

requested reinstatement; provide
detailed notice of, and information in
cases in which we have disqualified or
suspended a representative; and assist
the Department of Justice in Federal
court litigation, including that which
relates to our decision to disqualify or
suspend a representative or not
recognize an individual as a
representative.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information
about individuals who allegedly fail to
meet our qualifications to serve as
representatives before us, as provided
by the Social Security Act or regulations
relating to representation of claimants
and beneficiaries. This system also
maintains information about
representatives alleged to have violated
the provisions of the Social Security Act
or our regulations relating to
representation of claimants and
beneficiaries; representatives whom we
have found to have committed such
violations and we have disqualified or
suspended; and representatives whom
we have investigated, but have not
disqualified or suspended, because we
resolved the matter without an action to
disqualify or suspend the
representative, or because we found that
no violations occurred.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records
pertaining to individuals providing
representational services to our
claimants, as well as, representatives
who have represented claimants and
beneficiaries before us. For example, we
collect the representative's name; date
of birth; Social Security number (SSN);
representative identification number;
home or business address(es); telephone
and fax numbers; email address; and
type of representative (*i.e.*, attorney or
non-attorney).

This system also consists of records
regarding the representative's legal
standing and business affiliations. For
example, we collect the representative's
status (*e.g.*, suspended or disqualified to
act as a representative before SSA); bar,
court, and Federal program or agency
admission information (*e.g.*, year
admitted, license number, present
standing, and disciplinary history);
copies of all documentation resulting
from our investigation and actions taken
due to violations of the Social Security
Act and our regulations relating to the
representative; employer identification
number; and relevant claimant and
beneficiary information.

The following are examples of
information covered in this system

relating to the representation of
beneficiaries and claimants:

- Documentation resulting from our
investigation or actions taken due to
violations of the Social Security Act or
our regulations;
- Documentation relating to any
request for recognition or reinstatement
that a non-recognized person or
disqualified or suspended
representative files with us;
- Documentation pertaining to
hearings on charges of alleged violations
of the Social Security Act or our
regulations; and
- Information collected on our paper
and electronic forms.

The system also consists of records
pertaining to Appeal Council reviews of
the decisions rendered in hearings, on
charges of violations of the Social
Security Act or our regulations, or
requests for reinstatement to practice as
a representative before us; copies of
notifications of a representative's
disqualification or suspension or a
person's non-recognition; and
documentation pertaining to any legal
or administrative action that a
disqualified or suspended
representative, or non-recognized
person brings against us.

RECORD SOURCE CATEGORIES:

We obtain information in this system
of records from existing SSA systems of
records such as the Claims Folders
System, (60-0089) Master Beneficiary
Record (60-0090); Supplemental
Security Income Record and Special
Veterans Benefits (60-0103); Electronic
Disability Claim File (60-0320), and
Appointed Representative File (60-
0325).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

We will disclose records pursuant to
the following routine uses; however, we
will not disclose any information
defined as "return or return
information" under 26 U.S.C. 6103 of
the Internal Revenue Code (IRC), unless
authorized by a statute, the Internal
Revenue Service (IRS), or IRS
regulations.

1. To applicants for benefits or
payments, claimants, and beneficiaries
to inform them that we have
disqualified or suspended the
representative from further
representation before us or that the
person was not recognized as a
representative, and the basis for our
action.

2. OGC may make disclosures to a
Federal or State court, administrative
tribunal, or bar disciplinary authority or

other authority in the Federal jurisdiction(s) or State(s) in which an attorney is admitted to practice to the extent necessary to inform them that we have disqualified or suspended the attorney from representing claimants or beneficiaries before us and the basis for our action.

3. OGC may make disclosures to an official or employee of a Federal, State, or local agency to the extent necessary to inform him or her that we have disqualified or suspended a representative from representing claimants or beneficiaries before us, and the basis for our action, to permit that agency to perform its official duties related to representation of parties before that agency.

4. To any person or entity, including legal counsel for a representative, from which OGC needs information for investigation or litigation of any action against a representative about whom the record is maintained; to inform the individual or entity of the purpose(s) of the request; and to identify the type of information needed, and if it is in the possession of the person or entity, to request it. OGC will disclose information under this routine use to any person, entity, or representative, and his or her legal counsel, for the purpose of, and to the extent necessary, to identify the representative of record, explain the purpose of our request, and identify and request information we need to facilitate our investigation of, or litigation against, the representative.

5. To the Department of Justice (DOJ), a court or other tribunal, or another party before such court or tribunal, when

(a) SSA, or any component thereof; or
(b) any SSA employee in his or her official capacity; or

(c) any SSA employee in his or her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where we determine the litigation is likely to affect SSA or any of its components, is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before the tribunal, is relevant and necessary to the litigation, provided, however, that in each case, we determine that such disclosure is compatible with the purpose for which the records were collected.

6. To DOJ, the Federal Bureau of Investigation, Offices of United States Attorneys, and other Federal law enforcement agencies as necessary, for

investigation and potential prosecution of violations of the Social Security Act.

7. To a congressional office in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record or a third party acting on the subject's behalf.

8. To the public, via our website at www.ssa.gov, to advise that we have disqualified or suspended an individual from representing claimants before us, or have not recognized an individual as a representative.

9. To individuals, groups, organizations, or government entities that routinely refer potential claimants or beneficiaries to attorneys or individuals other than attorneys for the purpose of putting such individuals, groups, organizations, or government entities on notice that we have disqualified or suspended a representative from representation before us, or not recognized that individual as a representative.

10. To any individual or entity with whom the representative is affiliated or has indicated that he or she wants to be affiliated in representing claimants before us, notice that we have disqualified or suspended the affiliated or potentially affiliated representative from representation before us, or not recognized that individual as a representative.

11. To the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906.

12. To appropriate agencies, entities, and persons when:

(a) SSA suspects or has confirmed that there has been a breach of the system of records;

(b) SSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, SSA (including its information systems, programs, and operations), the Federal Government, or national security; and

(c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

13. To the Office of the President, in response to an inquiry received from that office made on behalf of, and at the request of, the subject of record or a third party acting on the subject's behalf.

14. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for us, as authorized

by law, and they need access to personally identifiable information (PII) in our records to perform their assigned agency functions.

15. To Federal, State and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) to enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of our facilities, or

(b) to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

16. To contractors and other Federal agencies, as necessary, for the purpose of assisting us in the efficient administration of its programs. We will disclose information under this routine use only in situations in which we may enter into a contractual or similar agreement to obtain assistance in accomplishing an SSA function relating to this system of records.

17. OGC may make disclosures to a Federal or State court, administrative tribunal, bar disciplinary authority or other authority as necessary, to permit these authorities to investigate and conduct proceedings relating to potential professional disciplinary actions or other measures relating to the authorities' regulation of professional conduct.

18. To another Federal agency or Federal entity, when we determine that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(a) Responding to a suspected or confirmed breach; or

(b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

We will maintain records in this system in paper and in electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

We will retrieve records in this system by name, SSN, claimant or representative identification number, or other claimant information that is relevant to the investigation.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with NARA rules codified at 36 CFR 1225.16, we maintain

records in accordance with agency-specific records schedule N1-047-10-004/I.E.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

We retain electronic and paper files containing personal identifiers in secure storage areas accessible only by our authorized employees and contractors who have a need for the information when performing their official duties. Security measures include, but are not limited to, the use of codes and profiles, personal identification number and password, and personal identification verification cards. We restrict access to specific correspondence within the system based on assigned roles and authorized users. We maintain electronic files with personal identifiers in secure storage areas. We use audit mechanisms to record sensitive transactions as an additional measure to protect information from unauthorized disclosure or modification. We keep paper records in cabinets within secure areas, with access limited to only those employees who have an official need for access in order to perform their duties.

We annually provide our employees and contractors with appropriate security awareness training that includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of, PII (5 U.S.C. 552a(i)(1)). Furthermore, employees and contractors with access to databases maintaining PII must annually sign a sanctions document that acknowledges their accountability for inappropriately accessing or disclosing such information.

RECORD ACCESS PROCEDURES:

Individuals may submit requests for information about whether this system contains a record about them by submitting a written request to the system manager at the above address, which includes their name, SSN, or other information that may be in this system of records that will identify them. Individuals requesting notification of, or access to, a record by mail must include: (1) A notarized statement to us to verify their identity; or (2) must certify in the request that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

Individuals requesting notification of, or access to, records in person must provide their name, SSN, or other

information that may be in this system of records that will identify them, as well as provide an identity document, preferably with a photograph, such as a driver's license. Individuals lacking identification documents sufficient to establish their identity must certify in writing that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

CONTESTING RECORD PROCEDURES:

Same as record access procedures. Individuals should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

NOTIFICATION PROCEDURES:

Same as records access procedures. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

75 FR 25904, Representative Disqualification, Suspension, and Non-Recognition Information File.

80 FR 919, Representative Disqualification, Suspension, and Non-Recognition Information File.

83 FR 54969, Representative Disqualification, Suspension, and Non-Recognition Information File.

[FR Doc. 2020-26794 Filed 12-4-20; 8:45 am]

BILLING CODE 4191-02-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2020-0059]

Rate for Assessment on Direct Payment of Fees to Representatives in 2021

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: We are announcing that the assessment percentage rate under the Social Security Act (Act) is 6.3 percent for 2021.

FOR FURTHER INFORMATION CONTACT:

Jeffrey C. Blair, Associate General Counsel for Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401. Phone: (410) 965-3157, email *Jeff.Blair@ssa.gov*.

SUPPLEMENTARY INFORMATION: A claimant may appoint a qualified individual as a representative to act on his or her behalf in matters before the Social Security Administration (SSA). If the claimant is entitled to past-due benefits and was represented either by an attorney or by a non-attorney representative who has met certain prerequisites, we withhold up to 25 percent of the past-due benefits and use that money to pay the representative's approved fee directly to the representative.

When we pay the representative's fee directly to the representative, we must collect from that fee payment an assessment to recover the costs we incur in determining and paying representatives' fees. The Act provides that the assessment we collect will be the lesser of two amounts: A specified dollar limit; or the amount determined by multiplying the fee we are paying by the assessment percentage rate.¹

The Act initially set the dollar limit at \$75 in 2004 and provides that the limit will be adjusted annually based on changes in the cost-of-living.² Currently, the maximum dollar limit for the assessment is \$98, as we announced in the **Federal Register** on October 22, 2020 (85 FR 67413).

The Act requires us each year to set the assessment percentage rate at the lesser of 6.3 percent or the percentage rate necessary to achieve full recovery of the costs we incur to determine and pay representatives' fees.³

Based on the best available data, we have determined that the current rate of 6.3 percent will continue for 2021. We will continue to review our costs for these services on a yearly basis.

Michelle King,

Deputy Commissioner for Budget, Finance, and Management.

[FR Doc. 2020-26795 Filed 12-4-20; 8:45 am]

BILLING CODE 4191-02-P

¹ 42 U.S.C. 406(d), 406(e), and 1383(d)(2).

² 42 U.S.C. 406(d)(2) and 1383(d)(2)(C)(ii)(I).

³ 42 U.S.C. 406(d)(2)(B)(ii) and 1383(d)(2)(C)(ii)(II).

SURFACE TRANSPORTATION BOARD**[Docket No. FD 36448]****Canadian Pacific Railway Company—
Control Exemption—Detroit River
Tunnel Company**

On October 16, 2020, Canadian Pacific Railway Company (CPRC),¹ a Class I carrier, filed a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 11323–24 to allow CPRC and its wholly owned noncarrier subsidiary, DRTP Holdings ULC, “to acquire certain partnership interests” from Borealis Transportation Infrastructure Trust (BTIT)² in the Detroit River Tunnel Partnership (the Partnership), which indirectly owns the Detroit River Tunnel a/k/a the Michigan Central Railway Tunnel (Tunnel), and “to continue in control of the Tunnel.” (Pet. 1.)³ The Board will grant CPRC’s petition for exemption, subject to standard labor protective conditions.

Background

Detroit River Tunnel Company (DRTC), which is indirectly owned by the Partnership,⁴ owns the Tunnel, a two-bore rail tunnel that connects Windsor, Ont., and Detroit, Mich. DRTC’s rail line extends 3.24 miles, between milepost 228.08 in Detroit and milepost 224.84 in Windsor, of which approximately 1.79 miles are located within the United States. (Pet. 1–2.) Pursuant to a 2001 Operating, Management, and Maintenance Agreement (OMM Agreement) and a 2009 Amended and Restated Partnership Agreement (Partnership Agreement) between CPRC and BTIT, CPRC currently exercises operational control over the Tunnel. (*Id.* at 3.) Under the OMM Agreement, CPRC maintains the Tunnel and dispatches and controls Tunnel rail operations.⁵

¹ CPRC is the Canadian rail operating subsidiary of Canadian Pacific Railway Ltd. CPRC and its U.S. rail operating subsidiaries do business as Canadian Pacific (CP).

² BTIT is an indirect subsidiary of OMERS Administration Corporation. (Pet. 2.)

³ CPRC filed its petition as a continuance-in-control exemption. It appears, however, that the transaction involves CPRC acquiring BTIT’s 83.5% ownership interest, and as such, it has been captioned as a control exemption.

⁴ CPRC states that the Partnership owns the Detroit River Tunnel Holding Corporation, which owns DRTC. (Pet. 2, n.1.)

⁵ In 2001, the Board exempted a control transaction under which CPRC held 50% of ownership interests in the newly created Partnership as well as “increased operational control of the Tunnel.” See *Borealis Infrastructure Trust Mgmt. Inc.—Acquis. Exemption—Detroit River Tunnel Co.*, FD 33984 et al., slip op. at 7 (STB served Dec. 19, 2001). BTIT also acquired the remaining 50% of ownership interests in the

(*Id.*) CPRC is also responsible for ensuring that other railroads can use the Tunnel pursuant to each railroad’s Tunnel User Agreement.⁶ (See Pet., Ex. 3, OMM Agreement, Article 2.4.) CPRC currently owns 16.5% of the ownership interests in the Partnership; BTIT owns the remaining 83.5%. (Pet. 2.)

Under the proposed transaction, CPRC’s acquisition of BTIT’s 83.5% ownership interest in the Partnership would result in CPRC, directly and via DRTP Holdings ULC, holding 100% of the ownership interests in the Tunnel. (Pet. 4.) CPRC states that it would continue to dispatch, operate, and maintain the Tunnel, as the Partnership Agreement and OMM Agreement would remain in effect. (*Id.* at 3.) CPRC notes that other railroads would continue to maintain their access to the Tunnel. CPRC thus states that the transaction would not have an adverse effect on service levels and that no significant operational changes are planned. (*Id.* at 3–4.)

Discussion and Conclusions

Under 49 U.S.C. 11323(a)(3), the acquisition of control of a rail carrier by any number of rail carriers requires prior Board approval. Under section 10502(a), however, the Board must exempt a transaction or service from regulation if it finds that: (1) Regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either the transaction or service is limited in scope, or regulation is not needed to protect shippers from the abuse of market power.

In this case, an exemption from the prior approval requirements of sections 11323–24 is consistent with the standards of section 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under sections 11323–24 is not

Partnership from Canadian National Railway Company (CN). *Id.* at 3, 5 (finding that BTIT did not require Board authorization to acquire its 50% share in the Partnership). CPRC states that, in 2009, BTIT acquired an additional 33.5% ownership interest in the Partnership from CPRC, increasing its ownership to its current 83.5% share and reducing CPRC’s ownership interest to 16.5%, and that the OMM Agreement, under which CPRC dispatches trains and controls operations, continued in effect. (Pet. 2–3.)

⁶ CPRC states that operations in the Tunnel, including CPRC’s, are pursuant to DRTC-granted trackage rights. See, e.g., *Canadian Pac. R.R.—Trackage Rights Exemption—Detroit River Tunnel Co.*, FD 34006 (STB served Mar. 16, 2001). CPRC notes that CP traffic currently accounts for approximately 98% of all Tunnel traffic and that, currently, CSX Transportation, Inc. (CSXT), is the only carrier with an active Tunnel User Agreement. CPRC further notes that CN’s occasional use of the Tunnel has been pursuant to detour agreements and that CN primarily moves traffic via a nearby Paul M. Tellier Tunnel. (Pet. 3, nn.6 & 8.)

necessary here to carry out the RTP. Approval of the transaction would result in CPRC increasing its ownership share of the Partnership with no lessening of competition or change in dispatch and operations of the Tunnel. An exemption would promote the RTP by: Minimizing the need for federal regulatory control over the transaction, section 10101(2); ensuring the development and continuation of a sound rail transportation system that would continue to meet the needs of the public, section 10101(4); fostering sound economic conditions in transportation, section 10101(5); encouraging efficient management, section 10101(9); and providing for the expeditious resolution of this proceeding, section 10101(15). Other aspects of the RTP would not be adversely affected.

Regulation of the control transaction is not needed to protect shippers from an abuse of market power.⁷ Nothing in the record indicates that any shipper would lose an existing rail service option as a result of the proposed transaction. According to CPRC, it would continue to dispatch, operate, and maintain the Tunnel, as it has since 2001. CPRC also states that, pursuant to the terms of the OMM Agreement, other railroads would continue to be able to use the Tunnel pursuant to Tunnel User Agreements. Currently, CP traffic accounts for approximately 98% of all Tunnel traffic and CSXT is the only carrier with an active Tunnel User Agreement. The transaction thus would not result in any shipper losing access to rail service or foreclose any transportation options currently available to shippers. Moreover, no shipper (or any other entity) has objected to the control transaction.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the Board will impose the standard employee protective conditions in *New York Dock Railway—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff’d* *New York Dock Railway v. United States*, 609 F.2d 83 (2d Cir. 1979).

The control transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(1)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting

⁷ Given this finding, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. 10502(a).

requirements under 49 CFR 1105.8(b)(3), because it will not substantially change the level of maintenance of railroad properties.

CPRC requests authority to control the Tunnel by December 15, 2020, so that the parties can close the transaction before the end of the year. The exemption will be effective December 15, 2020, and petitions to stay will be due by December 10, 2020. Petitions to reopen will be due by December 22, 2020.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25 the control transaction described above, subject to the employee protective conditions in *New York Dock Railway—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd New York Dock Railway v. United States*, 609 F.2d 83 (2d Cir. 1979).

2. Notice of the exemption will be published in the **Federal Register**.

3. The exemption will become effective on December 15, 2020. Petitions for stay must be filed by December 10, 2020. Petitions to reopen must be filed by December 22, 2020.

Decided: December 1, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2020-26811 Filed 12-4-20; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA-2020-0014]

Surface Transportation Project Delivery Program; Alaska Department of Transportation Third Audit Report

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; Request for comment.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP-21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu

of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This notice announces and solicits comments on the third audit report for the Alaska Department of Transportation and Public Facilities (DOT&PF).

DATES: Comments must be received on or before January 6, 2021.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590. You may also submit comments electronically at www.regulations.gov. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone can search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. David T. Williams, Office of Project Development and Environmental Review, (202) 366-5074, David.Williams@dot.gov, or Mr. Jay Payne, Office of the Chief Counsel, (202) 366-4241, James.O.Payne@dot.gov; Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at www.regulations.gov.

Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA

Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The DOT&PF published its application for NEPA assumption on May 1, 2016, and made it available for public comment for 30 days. After considering public comments, DOT&PF submitted its application to FHWA on July 12, 2016. The application served as the basis for developing a memorandum of understanding (MOU) that identified the responsibilities and obligations that the DOT&PF would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on August 25, 2017, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FHWA and DOT&PF considered comments and proceeded to execute the MOU. Effective November 13, 2017, DOT&PF assumed FHWA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the MOU.

Section 327(g) of title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the MOU during each of the first 4 years of State participation and, after the fourth year, monitor compliance. The FHWA must make the results of each audit available for public comment. The second audit report of DOT&PF compliance was finalized on February 25, 2020. This notice announces the availability of the third audit report for DOT&PF and solicits public comment on same.

Authority: Section 1313 of Public Law 112-141; Section 6005 of Public Law 109-59; 23 U.S.C. 327; 23 CFR 773.

Nicole R. Nason,

Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program, FHWA's Audit of the Alaska Department of Transportation

April 6-10, 2020

Executive Summary

This report summarizes the results of the Federal Highway Administration's (FHWA) third audit of the Alaska Department of Transportation and Public Facilities' (DOT&PF) assumption of FHWA's project-level National Environmental Policy Act (NEPA) responsibilities and obligations pursuant to a 23 U.S.C. 327

Memorandum of Understanding (MOU). The DOT&PF entered the NEPA Assignment Program after more than 8 years of experience making FHWA NEPA Categorical Exclusion (CE) determinations pursuant to 23 U.S.C. 326 (beginning September 22, 2009).

Alaska's MOU became effective on November 13, 2017. Currently, FHWA's NEPA responsibilities in Alaska include the oversight and auditing of the DOT&PF's execution of the NEPA Assignment Program and certain activities excluded from the MOU, such as the NEPA reviews of projects advanced by direct recipients other than the DOT&PF.

The FHWA audit team began to prepare for the site visit in November 2019. The audit team reviewed DOT&PF's NEPA project files, DOT&PF's response to FHWA's pre-audit information request (PAIR), and considered DOT&PF's Self-Assessment Report. On April 6–10, 2020, the audit team conducted a completely virtual site visit rather than its traditional on-site visit due to national health emergency travel restrictions.

The audit team appreciates DOT&PF's responsiveness to the questions regarding the status of general observations from the second audit. This report concludes with a status update for FHWA's observations from the second audit report.

The audit team finds DOT&PF in substantial compliance with the terms of the MOU in meeting the responsibilities it has assumed. This report does not identify any non-compliance observations; it does identify two general observations and three successful practices.

Background

The NEPA Assignment Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for highway projects. This program is codified at 23 U.S.C. 327. When a State assumes these Federal responsibilities for NEPA project decisionmaking, the State becomes solely responsible and solely liable for carrying out these obligations in lieu of and without further NEPA-related approval by FHWA.

The FHWA assigned responsibility for making project NEPA approvals and other related environmental decisions for highway projects to DOT&PF. The MOU documents these responsibilities. Examples of responsibilities DOT&PF has assumed in addition to NEPA include Section 7 consultation under the Endangered Species Act and

consultation under Section 106 of the National Historic Preservation Act.

This is the third of four required annual audits pursuant to 23 U.S.C. 327(g) and Part 11 of the MOU. The FHWA uses audits as the primary mechanism to oversee DOT&PF's compliance with the MOU and the NEPA Assignment Program requirements. This includes ensuring compliance with applicable Federal laws and policies, evaluating DOT&PF's progress toward achieving the performance measures identified in Section 10.2 of the MOU, and collecting information needed for the Secretary's annual report to Congress. The FHWA must present its audit results in a report and make it available for public comment in the **Federal Register**.

The audit team included NEPA subject matter experts from FHWA Alaska Division Office, the Chief Counsel's Office, the Resource Center, and Headquarters Office of Project Development & Environmental Review and Infrastructure.

Scope and Methodology

The audit team examined a sample of DOT&PF's NEPA project files, DOT&PF responses to the PAIR, and DOT&PF's Self-Assessment Report. The audit team also interviewed resource agencies and DOT&PF staff and reviewed DOT&PF policies, guidance, and manuals pertaining to NEPA responsibilities. All reviews focused on objectives related to the six NEPA Assignment Program elements: Program Management, Documentation and Records Management, Quality Assurance/Quality Control (QA/QC), Training, Performance Measures, and Legal Sufficiency.

Project File Review: To consider DOT&PF staff adherence to program procedures and Federal requirements, the audit team selected a sample of individual project files for which the environmental review had been completed. The audit team evaluated DOT&PF's compliance with assumed responsibilities and adherence to their own processes and procedures for project-level environmental decisionmaking. The audit team did not evaluate DOT&PF's project-specific decisions. The 54 sampled files included programmatic CEs (actions approved in the regional offices as noted in DOT&PF's November 2017 NEPA Assignment Categorical Exclusion guidance), CEs and Environmental Assessments (approved in the Statewide Environmental Office (SEO)), and re-evaluations (approved by the same office as the original environmental document).

PAIR Review: The audit team reviewed DOT&PF's responses to the PAIR, which consisted of 32 questions about specific elements in the MOU that DOT&PF must implement. The audit team used these responses to develop specific follow-up questions for interviews with DOT&PF staff.

DOT&PF Self-Assessment Review: The audit team reviewed DOT&PF's January 2020 Self-Assessment Report and used it to develop specific follow-up questions for interviews with DOT&PF staff. The NEPA Assignment Program MOU Section 8.2.5 requires the DOT&PF to conduct annual self-assessments of its QA/QC procedures and performance.

Interviews: The audit team conducted 21 interviews with DOT&PF staff. Interviewees included staff from each of DOT&PF's three regional offices and its SEO. The audit team invited DOT&PF staff and middle management to participate in interviews to ensure they represented a diverse range of staff expertise, experience, and program responsibility.

In addition, the audit team conducted two phone interviews of attorneys with the Alaska Department of Law and five phone interviews with staff at the U.S. Army Corps of Engineers and the National Marine Fisheries Service (NMFS).

Policy/Guidance/Manual Review: Throughout the document reviews and interviews, the audit team verified information on DOT&PF's NEPA Assignment Program including DOT&PF policies, guidance, manuals, and reports. This included the Environmental Program Manual (EPM), the NEPA Assignment QA/QC Plan, the NEPA Assignment Program Training Plan, and the NEPA Assignment Self-Assessment Report.

Overall Audit Opinion

This report identifies two observations and three successful practices. The audit team finds DOT&PF is substantially in compliance with the provisions of the MOU, has carried out the environmental responsibilities it assumed through the NEPA Assignment Program, and has taken steps to address observations identified in the second audit.

Non-Compliance Observations

The audit team did not make any non-compliance observations in the third audit.

Observations and Successful Practices

This section summarizes the audit team's observations of DOT&PF's NEPA Assignment Program implementation,

and DOT&PF's successful practices. "Observations" are items the audit team would like to draw DOT&PF's attention to, which may benefit from revisions to improve processes, procedures, or outcomes. The DOT&PF may have already taken steps to address or improve upon the audit team's observations, but at the time of the audit they appeared to be areas where DOT&PF could make improvements. "Successful practices" are positive results that FHWA would like to commend DOT&PF on developing. These may include ideas or concepts that DOT&PF has planned but not yet implemented. Successful practices and observations are described under the six MOU topic areas: Program Management, Documentation and Records Management, QA/QC, Training, Performance Measures, and Legal Sufficiency.

This audit report provides an opportunity for DOT&PF to take further actions to improve their program. The FHWA will consider the status of areas identified for potential improvement in this audit's observations as part of the scope of the fourth audit. The fourth audit report will include a summary discussion that describes progress since this audit.

Program Management

Program Management includes the overall administration of the NEPA Assignment Program. The audit team noted the following successful practices and observations related to Program Management.

Successful Practice #1: Consultation With Resource Agencies

The review team interviewed five staff from the U.S. Army Corps of Engineers (USACE) and three staff from NMFS. Under Section 3.2.1 of the MOU, the State assumed the DOT Secretary's responsibilities for highway projects under NEPA for environmental review, reevaluation, consultation, or other actions required under the Endangered Species Act, the Clean Water Act, and other environmental laws. The audit teams' assessment of DOT&PF's compliance with consultation and permitting requirements under this section of the MOU resulted in the following five conclusions:

1. DOT&PF is submitting complete and accurate information to both the USACE and NMFS for consultation and permitting requirements.
2. DOT&PF is very responsive when agencies request additional information or revisions.

3. DOT&PF submits comprehensive and timely monitoring reports when they are required for projects.

4. DOT&PF has improved their oversight of construction contractors' adherence to USACE permit conditions. The DOT&PF has self-reported permit violations and worked with the USACE to remedy the situation.

5. DOT&PF has a good working relationship with USACE and NMFS. Some of the DOT&PF regions have set up regular meetings with the agencies to foster relationships and enhance communication. Resource agency interviews revealed that they think those meetings are helpful and would like them to continue.

The USACE interviews identified an opportunity to increase the efficiency of interagency coordination. The DOT&PF should more clearly identify in the permitting package whether a project is a Federal undertaking or not, and identify what coordination it has completed.

Observation #1: Self-Assessment Procedures

Section 8.2.5 of the MOU (Monitoring and Oversight), requires DOT&PF to perform annual self-assessments of its QA/QC process and performance to determine if the process is working as intended. Section 10.1.3 of the MOU (Performance Measurement) requires DOT&PF to collect and maintain data related to the attainment of performance measures, monitor progress towards meeting performance measures, and include its progress in a self-assessment. The DOT&PF's 2018 NEPA Assignment Program Self-Assessment Procedures require that SEO develop the preliminary and final self-assessment report through coordination with, and input from, the Regional Environmental Managers. The audit team found that DOT&PF did not develop the January 2020 Self-Assessment report in accordance with their procedures, nor distributed the final report to the Regions. The audit team based this finding on interviews.

Documentation and Records Management

Documentation and Records Management includes maintaining project files and other recordkeeping (whether hardcopy or electronic) pertaining to DOT&PF's discharge of the responsibilities it has assumed under the 23 U.S.C. 327 Program. From November 1, 2018, through October 31, 2019, DOT&PF made 287 project decisions. Through employing both random and judgmental sampling procedures, the audit team identified 54

project decisions to review, and did not identify any systemic issues warranting an observation.

Quality Assurance/Quality Control

Under Section 8.2.4 of the MOU, DOT&PF agreed to carry out regular QA/QC activities in accordance with the MOU and DOT&PF procedures established to implement the NEPA Assignment Program. Based on the information evaluated by the audit team, DOT&PF is conducting regular QA/QC activities in accordance with the MOU, though opportunities exist to utilize trend data to continue improving the program.

Training

Under Sections 12.1 and 12.2 of the MOU, DOT&PF committed to implementing training necessary to carry out the environmental responsibilities assumed under the NEPA Assignment Program. The DOT&PF also committed to assessing its need for training, developing a training plan, and updating the training plan on an annual basis.

Successful Practice #2: Central Region Organizational Cross-Training Initiative

The central region has recently kicked off an organizational cross-training initiative, called "Share-The-Knowledge," that provides opportunities for environmental analysts to get exposure to informal training in other functional areas, such as transportation planning, realty, safety, highway design, operations, and construction. Cross-training provides a general awareness of how and to what extent NEPA reviews can relate to project planning and inform Federal-aid highway project development.

Successful Practice #3: Taking Advantage of Training Opportunities

Based on interviews, the audit team learned the South Coast Region invited Federal resource agency representatives to monthly meetings to encourage knowledge sharing and partnering. During a time when training budgets are limited, FHWA encourages DOT&PF to continue to take advantage of training opportunities that may be made available by Federal partners. One example was when DOT&PF staff participated in the recent NMFS acoustic training in Anchorage.

Performance Measures

The DOT&PF continues to collect, maintain, and develop data towards monitoring its performance as required by Section 10.1.3 of the MOU. The audit

team noted the following observation related to Performance Measures.

Observation #2: Assessing Resource Agency Communication

Section 10.2.1 C. of the MOU requires DOT&PF to “Assess change in communication among DOT&PF, Federal and State agencies, and the public resulting from assumption of responsibilities under this MOU.” The MOU allows DOT&PF to determine the method it will use to assess this change. The DOT&PF selected to use an annual resource agency poll. The DOT&PF identified this measure in its *DOT&PF NEPA Assignment Program Performance Measures* document located on its website. In addition, DOT&PF reported in this audit, and Audits 1 and 2, that an annual resource poll would be the method for collecting data towards monitoring this measure. The DOT&PF has not used a resource agency poll to date. Through the audit team’s review of DOT&PF’s Self-Assessment, PAIR, and audit interviews with DOT&PF, the audit team found that a poll was not a useful tool to assess changes in communication. The FHWA recommends that the DOT&PF consider changing the method for reporting this measure.

Legal Sufficiency

Since 2017, the same attorney from the Alaska Department of Law (Alaska DOL), Transportation Section, has been assigned to the NEPA Assignment program. The assigned attorney has significant experience with Federal-aid highway projects and the Federal environmental process. The attorney works directly with DOT&PF staff on project environmental documents. Based on the interviews, the review process exceeded the standard set forth in the Environmental Procedures Manual (EPM), with the attorney being involved early in project development, normally reviewing a NEPA document before receiving a formal request for a legal sufficiency review. During the audit period, the attorney reviewed one Final Section 4(f) Evaluation and issued a finding of legal sufficiency in August 2019. The attorney did not review an environmental impact statement during the audit period.

The Alaska DOL management stated during the interviews that while one attorney is currently assigned to the program, should workload increase significantly another attorney would be assigned to NEPA work, perhaps through the utilization of outside counsel per 23 U.S.C. 327(a)(2)(G).

Based on these observations, the audit team finds that the DOT&PF meets the

legal sufficiency determination and staffing requirements set forth in the DOT&PF EPM.

Status of Observations From Audit #2 Report (April 2019)

This section describes the actions DOT&PF has taken (or is taking) in response to observations made during the second audit.

Observation #1: Applicability of Existing Interagency Agreements

Section 5.1.3 of the MOU required the DOT&PF to work with FHWA and the resource agencies to modify existing interagency agreements within 6 months of the effective date of the MOU. During Audit 2, the audit team determined that none of DOT&PF’s existing agreements applied to the current NEPA Assignment Program under 23 U.S.C. 327. According to the January 2020 Self-Assessment Report, “DOT&PF is not currently pursuing agency agreements per Section 5.1.4 of the MOU regarding appropriate processes and procedures.”

Observation #2: DOT&PF Delegation of Authority for NEPA Approvals

Section 3.3.1 of the MOU requires DOT&PF to make NEPA approvals (CE determinations, findings of no significant impact, or records of decision). Audit 2 revealed inconsistencies regarding the delegation of NEPA approvals within DOT&PF. The DOT&PF’s January 2020 Self-Assessment states that DOT&PF will incorporate a protocol that standardizes the delegation authority for NEPA approval in the regions in the February 2020 update of its EPM. The DOT&PF has not made any changes to the EPM since February 2018 per the DOT&PF’s response to Audit 3’s Pre-Audit Information Request. Based on interviews conducted as part of Audit 3, DOT&PF now plans to incorporate this protocol into the EPM in May 2020. Currently, each region has its own delegation process. Generally, DOT&PF delegates the NEPA approvals to the senior staff and communicates that delegation via email to affected parties. Most staff interviewed understand their region’s delegation process and new staff are becoming oriented with the process.

Observation #3: Staff Capacity

Sections 4.2.1 and 4.2.2 of the MOU outline the requirements for the State’s commitment of resources and adequate organizational staff capacity. Moderate to high staff turnover has been a recurring issue since the MOU went into effect (Audit #1 report Observation #3 and Audit #2 report Observation #3).

According to the January 2020 Self-Assessment Report, “DOT&PF’s staffing levels were a concern during this audit period and senior staff expended considerable effort to hire new qualified staff and to retain current staff. As a result of this effort, the regional offices are now fully or near fully staffed.” The DOT&PF is aware of the issue and continues to track staffing impacts on the NEPA Assignment Program through the QA/QC process.

Observation #4: Documentation of Environmental Commitments

Section 5.1.1 of the MOU requires the State to follow Federal laws, regulations, policies, and procedures to implement the responsibilities assumed. Audit 2 revealed inconsistencies regarding how DOT&PF was documenting environmental commitments and making sure that DOT&PF carries the environmental commitments through the project development process and into construction. The DOT&PF developed written guidance on the documentation of environmental commitments. According to the January 2020 Self-Assessment Report, the guidance was implemented on May 5, 2019. Based on the interviews conducted as part of Audit 3, DOT&PF staff understood who certified that the environmental commitments were included in the plan, specifications, and estimates, as well as their role in the certification process.

Observation #5: Inconsistency in Project Termini and Statewide Transportation Improvement Program (STIP)

Section 3.3.1 of the MOU requires DOT&PF, at the time of NEPA approval (CE determination, finding of no significant impact, or record of decision), to ensure that the project’s design concept, scope, and funding is consistent with current planning documents. During Audit 2, the audit team found one project file with an inconsistency between project termini shown in a project plan and that described in the STIP, and similar inconsistencies in the DOT&PF’s Audit 2 Self-Assessment. Project scope inconsistencies were not found by the file review team during Audit 3. The DOT&PF’s Audit 3 Self-Assessment identified one instance of a project description discrepancy that did not affect the scope of the project. Regional QC efforts appear to have improved this issue, although DOT&PF noted in their self-assessment that using the STIP project description as the project scope in environmental documents is not possible for all projects.

Observation #6: Training Plan Update

Section 12.2 of the MOU commits DOT&PF and FHWA to update the DOT&PF training plan annually in consultation with other Federal agencies as appropriate. The DOT&PF did not update its Training Plan prior to or during the Audit 2 process. In their response to the Audit 3 PAIR, DOT&PF stated “the training plan was updated on October 29, 2019 with minor revisions to Section 5. A list of proposed training has been added to this section and the RD&T2 [Research, Development, and Technology Transfer], FHWA, and Prior Training Requests subsections have been removed.” Based on the information gathered through the PAIR and interviews, the audit team is satisfied that the DOT&PF addressed the training observation from the second audit. Moving forward, DOT&PF committed to coordinating with the Alaska Division Office for future annual updates of the Training Plan.

[FR Doc. 2020–26790 Filed 12–4–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2020–0122]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Grote Industries, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant Grote Industries, LLC’s (Grote) application for a limited 5-year exemption to allow motor carriers operating trailers and van body trucks to install amber brake-activated pulsating warning lamps on the rear of trailers and van body trucks in addition to the steady-burning brake lamps required by the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency has determined that granting the exemption would likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: This exemption is effective December 7, 2020 and ending December 2, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV,

(202) 366–0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Dockets Operations, Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:**Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Grote’s Application for Exemption

Section 393.25(e) of the FMCSRs requires all exterior lamps (both required lamps and any additional lamps) to be steady-burning, except turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and

commercial motor vehicles (CMV) transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities.

Grote applied for an exemption from 49 CFR 393.25(e) to allow motor carriers operating trailers and van body trucks to install brake-activated pulsating warning lamps on the rear of trailers and van body trucks in addition to the steady-burning brake lamps required by the FMCSRs. Specifically, Grote requested allowance to use: (1) An upper pair of brake-activated warning lamps centered about the centerline of the trailer such that the centerline of the outermost identification (ID) lamps to the centerline of the auxiliary braking lamps is between 6–12 inches and collinear with the three ID lamp cluster; (2) a single brake-activated warning lamp centrally located on or below the rear sill collinear with the stop/tail/turn lamps; (3) an upper pair of brake-activated warning lamps (as described in (1) above) and a single brake-activated warning lamp centrally located on or below the rear sill collinear with the stop/tail/turn lamps; (4) a lower pair of brake-activated warning lamps centered about the centerline of the trailer located on or below the rear sill; or (5) an upper pair of brake-activated warning lamps (as described in (1) above) and a lower pair of brake-activated warning lamps as described in (4) above). The same brake-activated warning lamp options would also be applicable to van body straight trucks. These brake-activated warning lamps would be amber in color and act as a Class II strobe (pulsate) for up to 4 seconds with each application of the brake, then steadily burn red for the duration of the time the brake circuit is activated. The brake-activated pulsating warning lamps would be in addition to the steady-burning brake lamps required by the FMCSRs.

Grote is a manufacturer of vehicle lighting and safety equipment, and requests this relief on behalf of interstate motor carriers because previous research has demonstrated that the use of pulsating brake-activated warning lamps increases visibility of equipment and vehicles. The use of amber pulsating brake-activated warning lamps, in addition to steady-burning red brake lamps required by the FMCSRs, would allow commercial carriers to not only maintain operational safety levels, but also implement more efficient and effective operations.

A copy of the application is included in the docket referenced at the beginning of this notice.

Grote contended that the addition of the brake-activated pulsating lamp would improve safety, and stated that research shows that pulsating brake lamps installed in addition to required steady-burning red brake lamps improve visibility and prevent accidents. Grote also noted that FMCSA has previously granted a similar, but not identical, temporary exemption to Groendyke Transport, Inc. (Groendyke), based in part on Groendyke's real-world experience demonstrating that use of amber pulsating brake-activated warning lamps in addition to steady-burning red brake lamps had decreased the frequency of rear-end accidents involving its fleet of tank trailers (84 FR 17910; April 26, 2019).

Grote included in the application several studies conducted by the National Highway Traffic Safety Administration (NHTSA), another agency in the U.S. Department of Transportation, on the issues of rear-end crashes, distracted driving, and braking signals. Grote stated that the additional amber brake-activated pulsating warning lamp(s) will not have an adverse impact on safety, and that adherence to the terms and conditions of the exemption would likely achieve a level of safety equivalent to or greater than the level of safety achieved without the exemption.

Comments

FMCSA published a notice of the application in the **Federal Register** on May 12, 2020, and asked for public comment (85 FR 28136). The Agency received comments from the Transportation Safety Equipment Institute (TSEI), and the Commercial Vehicle Safety Alliance (CVSA).

TSEI stated that ample research has demonstrated that the use of pulsating amber lamps increases visibility of equipment and vehicles and would maintain operational safety levels, but also implement more efficient and effective operations. TSEI expressed a concern that the widespread use of amber brake-activated pulsating warning lamps may reduce the overall effectiveness of amber strobe lamps frequently used by emergency and service vehicles. TSEI recommended that human factors studies be conducted to ensure that amber brake-activated warning lamps do not affect amber strobe lamp effectiveness for emergency and service vehicles.

CVSA agreed with Grote's assessment that the previous NHTSA research identifies the safety benefits of amber brake-activated pulsating lamps, and supported allowing motor carriers operating trailers and van body trucks to

install amber brake-activated pulsating warning lamps on the rear of trailers and van body trucks in addition to the steady-burning brake lamps required by the FMCSRs.

FMCSA Decision

The FMCSA has evaluated the Grote exemption application and the comments received. The Agency acknowledges TSEI's concerns, but believes the technical analysis provided by the applicant and the body of research the Agency considered and discussed below adequately address those concerns.

The Agency believes that granting the temporary exemption to allow motor carriers operating trailers and van body trucks to install amber brake-activated pulsating warning lamps in addition to the steady-burning brake lamps required by the FMCSRs, will likely provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Rear-end crashes generally account for approximately 30 percent of all crashes. These types of crashes often result from a failure to respond (or delays in responding) to a stopped or decelerating lead vehicle. Data between 2010 and 2016 show that large trucks are consistently three times more likely than other vehicles to be struck in the rear in two-vehicle fatal crashes.^{1 2}

Both FMCSA and NHTSA have conducted research regarding alternative rear signaling systems to address rear-end crashes. FMCSA has conducted research and development of an Enhanced Rear Signaling (ERS) system for CMVs.³ The study noted that while brake lights are activated only with the service brakes, and the visual warning is provided only during conditions when the lead vehicle is decelerating using its braking system, brake lights are not activated during other conditions when rear-end collisions can occur (e.g., when the CMV is (1) stopped along the roadway or in traffic, (2) traveling slower, or (3) decelerating using an engine retarder). Because of the limitations of the existing

brake system described above, along with issues relating to visual distraction, the study examined ways for CMVs to detect rear-end crash threats and to provide drivers of following vehicles a supplemental visual warning—located on the lead vehicle, and in addition to the current brake lights—so following-vehicle drivers can quickly recognize impending collision threats.

During Phase I of this effort, researchers performed crash database analyses to determine causal factors of rear-end collisions and to identify potential countermeasures. Phase II continued through prototype development based on recommendations from Phase I. During Phase II field testing, potential benefits of using such countermeasures were realized. During Phase III, a multi-phased approach was executed to design, develop, and test multiple types of countermeasures on a controlled test track and on public highways. Phase III resulted in positive results for a rear-warning prototype system comprising 12 light-emitting diode (LED) units that would flash at 5 Hz to provide a visual warning to the following-vehicle drivers indicating that, with continued closing rate and distance, a collision will occur with the lead vehicle. Finally, the prototype system was further developed and refined to include modification of the system into a unit designed for simple CMV installation, collision-warning activation refinements, and rear-lighting brightness adjustments for nighttime conditions. Formal closed test-track and real-world testing were then performed to determine the ERS system collision-warning activation performance.

While the efforts described above demonstrated a promising system for follow-on research, FMCSA ultimately decided not to pursue formal field operational testing of the prototype system because of concerns relating to (1) the cost to implement the ERS system as configured, and (2) fleets' willingness to invest in the technology given the cost of the system. Nonetheless, the preliminary research showed that the ERS system performed well at detecting and signaling rear-end crash threats and drawing the gaze of following-vehicle drivers to the forward roadway which, if implemented, could potentially reduce the number and frequency of rear-end crashes into CMVs.

Separately, NHTSA has performed a series of research studies intended to develop and evaluate rear-signaling applications designed to reduce the frequency and severity of rear-end crashes via enhancements to rear-brake

¹ U.S. Department of Transportation, National Highway Traffic Safety Administration (2012), Traffic Safety Facts—2010 Data; Large Trucks, Report No. DOT HS 811 628, Washington, DC (June 2012).

² U.S. Department of Transportation, National Highway Traffic Safety Administration (2018), Traffic Safety Facts—2016 Data; Large Trucks, Report No. DOT HS 812 497, Washington, DC (May 2018).

³ U.S. Department of Transportation, Federal Motor Carrier Safety Administration (2014), Expanded Research and Development of an Enhanced Rear Signaling System for Commercial Motor Vehicles, Report No. FMCSA-RRT-13-009, Washington, DC (April 2014).

lighting by redirecting drivers' visual attention to the forward roadway (for cases involving a distracted driver), and/or increasing the saliency or meaningfulness of the brake signal (for inattentive drivers).^{4 5}

Initially, the study quantified the attention-getting capability and discomfort glare of a set of candidate rear brake lighting configurations, using driver judgments, as well as eye-drawing metrics. This study served to narrow the set of candidate lighting configurations to those that would most likely be carried forward for additional on-road study. Both look-up (eye-drawing) data and interview data supported the hypothesis that simultaneous flashing of all rear lighting combined with increased brightness would be effective in redirecting the driver's eyes to the lead vehicle when the driver is looking away with tasks that involve visual load.

Subsequently, the study quantified the attention-getting capability of a set of candidate rear brake lighting configurations, including proposed approaches from automotive companies. This study was conducted to provide data for use in a simulation model to assess the effectiveness and safety benefits of enhanced rear brake light countermeasures. Among other things, this research demonstrated that flashing all lights simultaneously or alternately flashing is a promising signal for use in enhanced brake light applications, even at levels of brightness within the current regulated limits. Specifically, the study concluded that substantial performance gains may be realized by increasing brake-lamp brightness levels under flashing configurations; however, increases beyond a certain brightness threshold will not return substantive performance gains.

Both FMCSA and NHTSA have conducted extensive research and development programs to examine alternative rear-signaling systems to reduce the incidence of rear-end crashes. However, while these efforts concluded that improvements could be realized through rear-lighting systems that flash, neither the FMCSRs nor the

Federal Motor Vehicle Safety Standards (FMVSS) currently permit the use of pulsating, brake-activated lamps on the rear of CMVs.

With respect to the use of amber lights, NHTSA has conducted research on the effectiveness of rear turn-signal color on the likelihood of being involved in a rear-end crash.⁶ FMVSS No. 108 allows rear turn signals to be either red or amber in color. The study concluded that amber signals show a 5.3 percent effectiveness in reducing involvement in two-vehicle crashes where a lead vehicle is rear-struck in the act of turning left, turning right, merging into traffic, changing lanes, or entering/leaving a parking space. The advantage of amber, compared to red, rear turn signals was shown to be statistically significant.

FMCSA acknowledges the concerns of TSEI that the widespread use of amber brake-activated pulsating warning lamps may reduce the overall effectiveness of amber strobe lamps frequently used by emergency and service vehicles. FMCSA believes that the FMCSA and NHTSA research programs demonstrating the ability of alternative rear-signaling systems to reduce the frequency and severity of rear-end crashes, are sufficient to conclude that implementation of amber brake-activated pulsating warning lamps on the rear of trailers and van body trucks, in addition to the steady-burning brake lamps required by the regulations, is likely to provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning December 7, 2020 and ending December 2, 2025. During the temporary exemption period, motor carriers operating trailers and van body trucks will be allowed to install brake-activated pulsating warning lamps on the rear of trailers and van body trucks, in addition to the steady-burning brake lamps required by the FMCSRs. Specifically, the exemption will allow the use of: (1) An upper pair of brake-activated warning lamps centered about the centerline of the trailer such that the centerline of the outermost identification (ID) lamps to the centerline of the auxiliary braking lamps is between 6—12 inches and collinear

with the three ID lamp cluster; (2) a single brake activated warning lamp centrally located on or below the rear sill collinear with the stop/tail/turn lamps; (3) an upper pair of brake-activated warning lamps (as described in (1) above) and a single brake-activated warning lamp centrally located on or below the rear sill collinear with the stop/tail/turn lamps; (4) a lower pair of brake-activated warning lamps centered about the centerline of the trailer located on or below the rear sill; or (5) an upper pair of brake-activated warning lamps (as described in (1) above) and a lower pair of brake-activated warning lamps as described in (4) above). The same brake-activated warning lamp options shall also be applicable to van body straight trucks. The brake-activated warning lamps shall be amber in color and act as a Class II strobe (pulsate) for up to 4 seconds with each application of the brake, then steadily burn red for the duration of the time the brake circuit is activated. The brake-activated warning lamps are in addition to the steady-burning brake lamps required by the FMCSRs.

The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers operating trailers and van body trucks fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers operating trailers and van body trucks allowed to install amber brake-activated pulsating warning lamps on the rear of trailers and van body trucks, in addition to the steady-burning brake lamps required by the FMCSRs, are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts

⁴ U.S. Department of Transportation, National Highway Traffic Safety Administration (2009), Traffic Safety Facts—Vehicle Safety Research Notes; Assessing the Attention-Gettingness of Brake Signals: Evaluation of Optimized Candidate Enhanced Braking Signals; Report No. DOT HS 811 129, Washington, DC (May 2009).

⁵ U.S. Department of Transportation, National Highway Traffic Safety Administration (2010), Traffic Safety Facts—Vehicle Safety Research Notes; Assessing the Attention-Getting Capability of Brake Signals: Evaluation of Candidate Enhanced Braking Signals and Features; Report No. DOT HS 811 330, Washington, DC (June 2010).

⁶ U.S. Department of Transportation, National Highway Traffic Safety Administration (2009), The Effectiveness of Amber Rear Turn Signals for Reducing Rear Impacts; Report No. DOT HS 811 115, Washington, DC (April 2009).

with or is inconsistent with this exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020-26772 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2020-0162]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel THE GOOD LIFE (Motor Yacht); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2020-0162 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2020-0162 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2020-0162, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone 202-366-3157, Email Russell.Haynes@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel THE GOOD LIFE is:

—*Intended Commercial Use of Vessel:* “Occasional Charters”

—*Geographic Region Including Base of Operations:* “Florida” (Base of Operations: Miami, FL)

—*Vessel Length and Type:* 75’ Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD-2020-0162 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2020-0162 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: December 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020-26843 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration**

[Docket No. MARAD-2020-0157]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KAIMANA (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2020-0157 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2020-0157 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2020-0157, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey

Avenue SE, Room W23-461, Washington, DC 20590. Telephone 202-366-3157, Email Russell.Haynes@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KAIMANA is:

—*Intended Commercial Use of Vessel:* “Vessel will primarily be used for crewed charters of 6 passengers or less.”

—*Geographic Region Including Base of Operations:* “Florida” (Base of Operations: Key West, FL)

—*Vessel Length and Type:* 38.4’ Sailing Catamaran

The complete application is available for review identified in the DOT docket as MARAD-2020-0157 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2020-0157 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: December 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020-26835 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration**

[Docket No. MARAD-2020-0165]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GRABOWSKI (Sailing Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2020-0165 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2020-0165 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2020-0165, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone 202-366-3157, Email Russell.Haynes@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GRABOWSKI is:

—*Intended Commercial Use of Vessel:* “We will be operating shoreline cruises and eco tours for up to 6 passengers.”

—*Geographic Region Including Base of Operations:* “We intend to operate in the state of Florida.” (Base of Operations: Marco Island, FL)

—*Vessel Length and Type:* 42’ Sailing Vessel

The complete application is available for review identified in the DOT docket as MARAD-2020-0165 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2020-0165 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department

of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. § 55103, 46 U.S.C. § 12121

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Dated: December 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020-26833 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration**

[Docket No. MARAD-2020-0163]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel JADE (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0163 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2020–0163 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0163, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email Russell.Haynes@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JADE is:

- Intended Commercial Use of Vessel:* “Day charters in the Boothbay Harbor region. Take people out for a sail to show them the area from the water.”
- Geographic Region Including Base of Operations:* “Maine” (Base of Operations: Boothbay Harbor, ME)
- Vessel Length and Type:* 26’ Sailboat

The complete application is available for review identified in the DOT docket as MARAD–2020–0163 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and

MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2020–0163 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: December 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.

[FR Doc. 2020–26834 Filed 12–4–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0160]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SERENITY NOW (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0160 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2020–0160 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of

Transportation, MARAD–2020–0160, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email Russell.Haynes@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SERENITY NOW is:
—*Intended Commercial Use of Vessel:* Crewed passenger charters
—*Geographic Region Including Base of Operations:* “Florida, Puerto Rico” (Base of Operations: Key West, FL)
—*Vessel Length and Type:* 39’ Sailing Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0160 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the

instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2020–0160 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: December 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–26839 Filed 12–4–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0156]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SOUTHERN CROSSER (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0156 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2020–0156 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0156, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone 202-366-3157, Email Russell.Haynes@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SOUTHERN CROSSER is:

- Intended Commercial Use of Vessel:* “This vessel will be used for crewed charters of six passengers or less. The vessel is already in use for bareboat charters. Obtaining the waiver will provide additional employment opportunities for crew as bareboat charters are not required to hire crew. Hiring crew will also protect the owners by having professional mariners operate the vessel.”
- Geographic Region Including Base of Operations:* “Florida” (Base of Operations: Key West, FL)
- Vessel Length and Type:* 38.4’ Sailing Catamaran

The complete application is available for review identified in the DOT docket as MARAD-2020-0156 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected

on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2020-0156 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: December 2, 2020.

By Order of the Maritime Administrator.
T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.
 [FR Doc. 2020-26841 Filed 12-4-20; 8:45 am]
BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2020-0159]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PARTY GIRL (Motor Yacht); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2020-0159 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2020-0159 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2020-0159, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information

provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone 202-366-3157, Email Russell.Haynes@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PARTY GIRL is:

—*Intended Commercial Use of Vessel:*

“Vessel will be used for vessel charter, sunset cruises, bay cruises, and overnight trips.”

—*Geographic Region Including Base of Operations:* “California” (Base of Operations: San Diego, CA)

—*Vessel Length and Type:* 55’ Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD-2020-0159 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2020-0159 or visit the Docket Management Facility (see **ADDRESSES** for

hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: December 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020-26837 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2020-0161]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SLINGSHOT (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2020-0161 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2020-0161 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2020-0161, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey

Avenue SE, Room W23-461, Washington, DC 20590. Telephone 202-366-3157, Email *Russell.Haynes@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SLINGSHOT is:

—*Intended Commercial Use of Vessel:* “Bareboat Charters”

—*Geographic Region Including Base of Operations:* “California” (Base of Operations: Marina Del Rey, CA)

—*Vessel Length and Type:* 60.4’ Motor Vessel

The complete application is available for review identified in the DOT docket as MARAD-2020-0161 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2020-0161 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal

identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: December 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020-26840 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2020-0158]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MARCELONA (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is

authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2020-0158 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2020-0158 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2020-0158, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone 202-366-3157, Email *Russell.Haynes@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MARCELONA is:

—*Intended Commercial Use of Vessel:* “Charter”

—*Geographic Region Including Base of Operations:* “California” (Base of Operations: Marina Del Rey, CA)

—*Vessel Length and Type:* 39.3’ Motor Vessel

The complete application is available for review identified in the DOT docket

as MARAD–2020–0158 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2020–0158 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible,

a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: December 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–26836 Filed 12–4–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0164]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEAFARI (Power Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0164 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search

MARAD–2020–0164 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0164, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email Russell.Haynes@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEAFARI is:

—*Intended Commercial Use of Vessel:* “Occasional Casual Coastal and International Cruising Charters for fishing, diving and general sightseeing. Approximately 5 charters per month.”

—*Geographic Region Including Base of Operations:* “Florida” (Base of Operations: Boca Raton, Florida)

—*Vessel Length and Type:* 42' Power Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0164 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a

waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2020-0164 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and

response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: December 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020-26838 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2020-0155]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SUZY-Q (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 6, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2020-0155 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2020-0155 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2020-0155, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m.,

Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone 202-366-3157, Email Russell.Haynes@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SUZY-Q is:

—*Intended Commercial Use of Vessel:*

“The sole intent is to carry passengers for sight-seeing, day cruises, wildlife/eco-tours, water taxi, and sport fishing.”

—*Geographic Region Including Base of Operations:* Currently, the SUZY-Q has a small vessel waiver for Alaska (excluding Southeast Alaska), Oregon, Washington (see www.regulations.gov search docket “MARAD 2020-0089”), but now seeks an additional waiver for “Alaska, Oregon, Washington” removing the operating limitation in Alaska, (Base of Operations: Sitka, Alaska)

—*Vessel Length and Type:* 25' motor vessel

The complete application is available for review identified in the DOT docket as MARAD-2020-0155 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of

MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2020-0155 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves,

all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

Dated: December 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020-26842 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2020-0135]

Pipeline Safety: Random Drug Testing Rate; Management Information System Reporting; and Obtaining Drug and Alcohol Management Information System Sign-In Information

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of calendar year 2021 minimum annual percentage rate for random drug testing, reminder for operators to report contractor management information system (MIS) data using PHMSA supplemental instructions, and reminder of method for operators to obtain user name and password for electronic reporting.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 50 percent during calendar year 2021. Operators are reminded that drug and alcohol (D&A) testing information must be submitted for contractors who are performing or are ready to perform covered functions. For calendar year 2020 reporting, the user name and password for the Drug and Alcohol Management Information System (DAMIS) will be available in the PHMSA Portal.

DATES: Effective January 1, 2021, through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Wayne Lemoi, Drug & Alcohol Program Manager, Office of Pipeline Safety, by phone at 909-937-7232 or by email at wayne.lemoi@dot.gov.

SUPPLEMENTARY INFORMATION:

Notice of Calendar Year 2021 Minimum Annual Percentage Rate for Random Drug Testing

Operators of natural gas, hazardous liquid, and carbon dioxide pipelines, liquefied natural gas (LNG) facilities, and underground natural gas storage facilities must randomly select and test a percentage of all covered employees for prohibited drug use in accordance with 49 CFR part 199. Pursuant to § 199.105(c)(1), the PHMSA minimum annual random drug testing rate for all covered employees is 50 percent. The Administrator can adjust this random drug testing rate based on the reported positive rate in the pipeline industry's random drug tests, which is submitted in operators' annual Management Information System (MIS) reports as required by § 199.119(a). In accordance with § 199.105(c)(3), if the reported positive drug test rate is below 1 percent for 2 consecutive years, the Administrator can reduce the random drug testing rate to 25 percent of all covered employees. In calendar year 2019, the random drug test positive rate for the entire pipeline industry was reported at greater than 1 percent; therefore, the minimum annual random drug testing rate for calendar year 2021 is maintained at 50 percent of all covered employees.

Reminder for Operators To Report Contractor MIS Data

PHMSA developed and released online new *PHMSA Supplemental Instructions for DOT Drug & Alcohol Management Information System Reporting*. These instructions provide operators with the appropriate process for collecting and reporting annual D&A MIS testing data for contractors. The *Supplemental Instructions* help ensure that PHMSA can identify all the contractors who performed D&A covered functions for a specific pipeline operator; identify all the pipeline operators for whom a specific contractor performed D&A covered functions; and, has received a complete and accurate D&A MIS report for each contractor who performed D&A covered functions on any PHMSA regulated pipeline or facility in the applicable calendar year.

Pursuant to §§ 199.119(a) and 199.229(a), an operator having more than 50 covered employees is a large operator and an operator having 50 or fewer covered employees is a small operator. While contractor employees are covered employees per the regulations in § 199.3 and must be treated as such with regards to part 199, contractor employees are not included

in the calculation to determine if an operator is a large or small operator.

Large operators are always required to submit annual MIS reports whereas small operators are only required to submit MIS reports upon written request from PHMSA. If a small operator has submitted a MIS report in or after calendar year 2018, the PHMSA Portal message may state that no MIS report is required for calendar year 2020. If a small operator has grown to more than 50 covered employees during calendar year 2020, the PHMSA Portal message will include instructions for how to obtain a DAMIS user name and password for the 2020 calendar year reporting period.

If an operator is required to submit a MIS report in accordance with part 199, that report is not complete until PHMSA receives a MIS data report for each contractor that performed covered functions as defined in § 199.3. Operators must submit operator and contractor employee testing data in separate MIS reports to avoid duplicative reporting and inaccurate data that could affect the positive rate for the entire industry.

Reminder of Method for Operators To Obtain User Name and Password for Electronic Reporting

By early January 2021, the user name and password required for an operator to access DAMIS and enter calendar year 2020 data will be available to all operator staff with access to the PHMSA Portal. Pipeline operators have been submitting reports required by 49 CFR parts 191 and 195 through the PHMSA Portal (<https://portal.phmsa.dot.gov/pipeline>) since 2011. PHMSA determined that distributing information via the Portal would be more effective than the previous mailing process.

When the DAMIS user name and password are available in the PHMSA Portal, all registered users will receive an email to that effect. If operator staff responsible for submitting MIS reports do not receive the DAMIS information, they should coordinate with other registered PHMSA Portal users within their company to obtain the DAMIS user name and password. Registered PHMSA Portal users for an operator typically include operator staff or consultants who submit annual and incident reports through PHMSA F 7000- and 7100-series forms.

Operators that have not previously registered staff in the PHMSA Portal for the reporting purposes of parts 191 and 195 can register users by following the instructions at: <https://portal.phmsa.dot.gov/PHMSAPortal2/>

staticContentRedesign/howto/PortalAccountCreation.pdf.

Issued in Washington, DC, on December 1, 2020, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2020-26782 Filed 12-4-20; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Reports Relating to Currency in Excess of \$10,000 Received in a Trade or Business, or Received as Bail by Court Clerks; Form 8300

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collection found in existing Bank Secrecy Act regulations. Specifically, FinCEN invites comment on a renewal, without change, of existing information collection requirements for reports of currency in excess of \$10,000 received by a trade or business, or by court clerks as bail. These transactions are reported on Form 8300. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome, and must be received on or before February 5, 2021.

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-2020-0014 and the specific Office of Management and Budget (OMB) control number 1506-0018.

- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2020-0014 and OMB control number 1506-0018.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's review of existing regulations, as provided by Treasury's 2011 Plan for Retrospective

Analysis of Existing Rules. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107-56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, 31 U.S.C. 5311-5314 and 5316-5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures.¹ Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.²

31 U.S.C. 5331 of the BSA and 26 U.S.C. 6050I of the Internal Revenue Code require that certain transactions be reported to both FinCEN and the Internal Revenue Service (IRS) in the form and manner prescribed by the Secretary of the Treasury. Specifically, reporting is required by any person engaged in a trade or business who, in the course of such trade or business, receives more than \$10,000 in coins or currency in one transaction or two or more related transactions.³ Reporting is also required by any clerk of a federal

¹ Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism.

² Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

³ 31 CFR 1010.330. Pursuant to 31 CFR 1021.330(c), non-gaming businesses at casino hotels and resorts are separate trades or businesses in which the receipt of currency in excess of \$10,000 is reportable under 31 U.S.C. 5331 and 31 CFR 1010.330.

or state court who receives more than \$10,000 in currency as bail for any individual charged with a specified criminal offense.⁴ Reports filed under these authorities are made through the joint FinCEN/IRS Form 8300.⁵ Furthermore, verification requirements apply to transactions requiring the filing of Form 8300.⁶ Reports filed under 31 CFR 1010.330 and 31 CFR 1010.331 must be maintained for five years after the date of filing.⁷

II. Paperwork Reduction Act of 1995 (PRA)⁸

Title: Reports Relating to Currency in Excess of \$10,000 Received in a Trade or Business, or Received as Bail by Court Clerks; Form 8300 (31 CFR 1010.330 and 31 CFR 1010.331).

OMB Control Number: 1506–0018.

Report Number: Form 8300.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the requirements for (1) any person in a trade or business who, in the course of the trade or business, receives more than \$10,000 in coin or currency in one or more related transactions to report it to FinCEN, and (2) any clerk of a federal or state court who receives more than \$10,000 in currency as bail for any individual charged with a specified criminal offense to make report of information with respect to receipt of that currency.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review:

- Renewal without change of a currently approved information collection.

Frequency: As required.

Estimated Number of Respondents: 32,500 respondents.⁹

Estimated Recordkeeping and Reporting Burden:

The information required to be reported on the Form 8300 is basic information to which a filer would have access to in the course of doing business. For instance, the Form 8300 requires a trade or business or court

clerk to report identifying information about the individual from whom the cash was received, as well as any person on whose behalf the transaction was conducted. The Form 8300 also requires the filer to report a description of the transaction and method of payment, as well as identifying information for the business that received the cash. As this information is readily available to a trade or business or court clerk, FinCEN estimates that reporting this information will take 20 minutes on average. Additionally, while the Form 8300 may be filed electronically, which allows the filer to save an electronic version of the form and satisfy the recordkeeping requirement, many filers choose to file a paper copy of the Form 8300. Therefore, FinCEN estimates that the recordkeeping requirement will take 10 minutes on average. FinCEN estimates total hourly burden of reporting and recordkeeping for each Form 8300 is 30 minutes.

Estimated Total Annual Responses: 323,067 Form 8300s were filed in calendar year 2019.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 161,534 hours (323,067 Form 8300s filed in calendar year 2019 multiplied by 30 minutes and converted to hours).

Estimated Total Annual Recordkeeping Cost: FinCEN estimates the following annual burden cost: $161,534 \times \$30.60$ per hour¹⁰ = \$4,942,940.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

General Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Michael G. Mosier,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2020–26883 Filed 12–4–20; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for the date that sanctions become effective.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

⁴ 31 CFR 1010.331.

⁵ Currency transactions reportable under 31 U.S.C. 5313 or 31 CFR 1010.311, 1010.313, 1020.315, 1021.311, or 1021.313 are excluded from the Form 8300 reporting requirement. There are also several exceptions to the reporting requirement included in the regulation.

⁶ 31 CFR 1010.330(e)(2); 31 CFR 1010.331(c)(2).

⁷ 31 CFR 1010.330(e)(3); 31 CFR 1010.331(c)(1) (incorporating the requirements of 26 CFR 1.6050I–2(c)(3)(i)).

⁸ Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

⁹ In 2019, FinCEN received form 8300s from 32,462 unique filers based on their tax identification numbers (TIN). FinCEN is conservatively rounding this estimate to 32,500 respondents annually.

¹⁰ The U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at <https://www.bls.gov/oes/tables.htm>. The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer's Cost per Employee Compensation as of December 2019, available at <https://www.bls.gov/oes/tables.htm>. The ratio between benefits and wages for financial activities is \$15.95 (hourly benefits)/\$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the benefit/wages ratio, or 1.50. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position. The May 2019 Bureau of Labor Statistics average hourly wage for "43–3099 Financial Clerk" is \$20.40. ($\$20.40 \times 1.50 = \30.60).

Notice of OFAC Actions

On December 1, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. CORREA SALAS, Euclides, Turbo, Antioquia, Colombia; DOB 15 Mar 1975; POB Choco, Colombia; nationality Colombia; Gender Male; Cedula No. 71983546 (Colombia) (individual) [SDNTK]. Designated pursuant to section 805(b)(3) of the Foreign Narcotics Kingpin Designation Act (Kingpin Act), 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Jhon Fredy ZAPATA GARZON, a foreign person designated pursuant to the Kingpin Act.

2. MURILLO PALACIOS, Einer, Calle 115 No. 114BB-77 Apartamento 102 Primer Piso Edificio Siete Manzana T Quinta Etapa Urbanizacion La Serrania, Apartado, Antioquia 00853657, Colombia; DOB 08 Nov 1977; POB Quibdo, Choco, Colombia; nationality Colombia; Gender Male; Cedula No. 71253050 (Colombia) (individual) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Jhon Fredy ZAPATA GARZON, a foreign person designated pursuant to the Kingpin Act.

3. ZAPATA GARZON, Jhon Fredy (a.k.a. ZAPATA GARZON, John Fredy; a.k.a. "CANDADO"; a.k.a. "CANDADO MESSI"; a.k.a. "TUSO"), Vereda El Silencio, Carepa, Antioquia 05147, Colombia; Av. Cra. 7, No. 130-00, Bogota, Colombia; Carrera 78, Barrio Pueblo Nuevo, Vereda Carepa, Apartado, Antioquia 00829455, Colombia; Finca El Reposo, Vereda Aguas Claras, Necocli, Antioquia 034937, Colombia; Finca Mariancel N-1, Vereda Aguas Claras, Necocli, Antioquia 034938, Colombia; Finca La Diana, Finca Mariancel N-5, Vereda Aguas Claras, Necocli, Antioquia 03414390, Colombia; Finca Aguas Claritas, Finca Mariancel N-3, Vereda Aguas Claras, Necocli, Antioquia 03417, Colombia; El Billar, Vereda Cacique, La Tebaida, Quindio 28040222, Colombia; Transversal 21 No. 18-180 Unid. Residencial Senderos De La Pradera P.H. Apto. 202 Torre 3, Dosquebradas, Risaralda 29474418, Colombia; DOB 11 Apr 1978; POB Chigorodo, Antioquia, Colombia; nationality Colombia; Gender Male; Cedula No. 71253351 (Colombia); Passport AS700605 (Colombia) (individual) [SDNTK] (Linked To: CLAN

DEL GOLFO). Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the CLAN DEL GOLFO, a foreign person identified as a significant foreign narcotics trafficker pursuant to the Kingpin Act.

4. ZAPATA GARZON, Tatiana Marguerid (a.k.a., ZAPATA GARZON, Tatiana Margarid), Apartado, Antioquia, Colombia; DOB 28 Aug 1983; POB Antioquia, Colombia; nationality Colombia; Gender Female; Cedula No. 39426288 (Colombia) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of Jhon Fredy ZAPATA GARZON, a foreign person designated pursuant to the Kingpin Act.

Entities

1. DISTRIECOR S.A.S. (f.k.a., GRUPO PATRON LTDA), Cra 106A, Nro. 94 15, Nuevo Apartado, Apartado 05045, Colombia; NIT #8110469383 (Colombia) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Euclides CORREA SALAS, a foreign person designated pursuant to the Kingpin Act.

2. FRESNO HOME S.A.S. (f.k.a., AGROMADERAS ZAGAR S.A.S.), Kilometro 18 Vereda El Manzano Via Pereira Armenia, Pereira, Risaralda 66001, Colombia; NIT #9005402427 (Colombia) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Tatiana Marguerid ZAPATA GARZON, a foreign person designated pursuant to the Kingpin Act.

3. LAS INGENIERIAS S.A.S., Calle 144 16-34, Apto. 404, Bogota 1020, Colombia; Condominio Quintas De La Rioja, Casa 10, Etapa 1, Pereira, Risaralda, Colombia; website lasingenierias.com; NIT #9005892411 (Colombia) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Jhon Fredy ZAPATA GARZON, a foreign person designated pursuant to the Kingpin Act.

4. MULTIOPERACIONES DE OCCIDENTE S.A.S., Cra 106A, Nro 94

15, Nuevo Apartado, Apartado 05045, Colombia; NIT #9009355997 (Colombia) [SDNTK]. Designated pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3), for being owned, controlled, or directed by, or acting for or on behalf of, Einer MURILLO PALACIOS, a foreign person designated pursuant to the Kingpin Act.

Dated: December 1, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020-26807 Filed 12-4-20; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Actions**

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of a person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On December 2, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authorities listed below.

Individual

1. RODRIGUEZ SERRANO, Lucio, El Barrio de Guanajuato, Badiraguato, Sinaloa, Mexico; DOB 13 Dec 1946; POB Badiraguato, Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. ROSL461213HSLDRC09 (Mexico) (individual) [SDNTK]. Designated pursuant to section 805(b)(3) of the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1904(b)(3), for being directed by, or acting for or on behalf of, Rafael Caro Quintero.

Dated: December 2, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020-26802 Filed 12-4-20; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Actions**

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing updates to the identifying information of one individual and one entity currently included on OFAC's list of Specially Designated Nationals and Blocked Persons.

DATES: See **SUPPLEMENTARY INFORMATION** section for the date on which the updates become effective.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On December 1, 2020, OFAC updated the SDN List for the following individual and entity, whose property and interests in property continue to be blocked under the Foreign Narcotics Kingpin Designation Act.

Individual

1. USUGA DAVID, Dairo Antonio, Colombia; DOB 15 Sep 1971; POB Colombia; nationality Colombia; citizen Colombia; Cedula No. 71980054 (Colombia) (individual) [SDNTK].

The listing for this individual now appears as follows:

1. USUGA DAVID, Dairo Antonio (a.k.a. "OTONIEL"), Colombia; DOB 15 Sep 1971; POB Necocli, Antioquia, Colombia; nationality Colombia; citizen Colombia; Gender Male; Cedula No. 71980054 (Colombia) (individual) [SDNTK].

Entity

1. LOS URABENOS (Latin: LOS URABEÑOS) (a.k.a., BANDA CRIMINAL DE URABA; a.k.a., CLAN USUGA; a.k.a., LOS AUTODEFENSAS GAITANISTAS DE COLOMBIA;), Colombia; Honduras; Panama [SDNTK].

The listing for this entity now appears as follows:

1. CLAN DEL GOLFO (a.k.a., BANDA CRIMINAL DE URABA; a.k.a. CLAN USUGA; a.k.a., GULF CLAN; a.k.a. LOS AUTODEFENSAS GAITANISTAS DE COLOMBIA; a.k.a., LOS URABENOS (Latin: LOS URABEÑOS)), Colombia; Honduras; Panama [SDNTK].

Dated: December 1, 2020.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting.

[FR Doc. 2020-26809 Filed 12-4-20; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Regulation Project**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collection requirements related to continuation coverage requirements application to group health plans.

DATES: Written comments should be received on or before February 5, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue

Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form should be directed to LaNita Van Dyke, at (202) 317-6009 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at Lanita.VanDyke@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Continuation Coverage Requirements Application to Group Health Plans.

OMB Number: 1545-1581.

Regulation Project Number: REG-209485-86 (TD 8812).

Abstract: The regulations require group health plans to provide notices to individuals who are entitled to elect COBRA (The Consolidated Omnibus Budget Reconciliation Act of 1985) continuation coverage of their election rights. Individuals who wish to obtain the benefits provided under the statute are required to provide plans notices in the cases of divorce from the covered employee, a dependent child's ceasing to be dependent under the terms of the plan, and disability. Most plans will require that elections of COBRA continuation coverage be made in writing. In cases where qualified beneficiaries are short by an insignificant amount in a payment made to the plan, the regulations require the plan to notify the qualified beneficiary if the plan does not wish to treat the tendered payment as full payment. If a health care provider contacts a plan to confirm coverage of a qualified beneficiary, the regulations require that the plan disclose the qualified beneficiary's complete rights to coverage.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 12,079,600.

Estimated Time per Response: Varies from 30 seconds to 330 hours, depending on individual circumstances, with an estimated average of 14 minutes.

Estimated Total Annual Burden Hours: 404,640.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 1, 2020.

Chakinna B. Clemons,
Supervisory Tax Analyst.

[FR Doc. 2020-26766 Filed 12-4-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to Form CT-2, Employee Representative's Quarterly Railroad Tax Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden related to completing Form CT-

2, Employee Representative's Quarterly Railroad Tax Return.

DATES: Written comments should be received on or before February 5, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Employee Representative's Quarterly Railroad Tax Return.
OMB Number: 1545-0002.
Regulation Project Number: Form CT-2.

Abstract: Employee representatives file Form CT-2 quarterly to report compensation on which railroad retirement taxes are due. The IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT-2 also transmits the tax payment.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 112.
Estimated Time per Respondent: 1 hr. 11 min.

Estimated Total Annual Burden Hours: 132.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) 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; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: December 1, 2020.

Ronald J. Durbala,
IRS Tax Analyst.

[FR Doc. 2020-26763 Filed 12-4-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0031]

Agency Information Collection Activity under OMB Review: Veteran/Servicemember's Supplemental Application for Assistance in Acquiring Specially Adapted Housing

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Refer to "OMB Control No. 2900-0031."

FOR FURTHER INFORMATION CONTACT:

Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421-1354 or email danny.green2@va.gov. Please refer to "OMB Control No. 2900-0031" in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104-13; 44 U.S.C. 3501-3521.

Title: Veteran/Service member's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26-4555c.

OMB Control Number: 2900-0031.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C., chapter 21, authorizes a VA program of grants for

specially adapted housing for disabled veterans or servicemembers. Section 2101(a) of this chapter specifically outlines those determinations that must be made by VA before such grant is approved for a particular veteran or servicemember. VA Form 26-4555c is used to collect information that is necessary for VA to meet the requirements of 38 U.S.C. 2101(a). Also, see 38 CFR 36.4402(a), 36-4404(a), and 36.4405.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection

of information was published at 85 FR 174 on September 8, 2020, pages 55581-55582.

Affected Public: Individuals or Households.

Estimated Annual Burden: 350 Hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1400.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020-26814 Filed 12-4-20; 8:45 am]

BILLING CODE 8320-01-P

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