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U.S. GOVERNMENT
INFORMATION
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FEDERAL REGISTER

Vol. 86 Monday,
No. 14 January 25, 2021

Pages 6825–7058

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Presidential Documents

Title 3—

The President

Proclamation 10139 of January 19, 2021

Adjusting Imports of Aluminum Into the United States

By the President of the United States of America

A Proclamation

1. On January 19, 2018, the Secretary of Commerce (Secretary) transmitted to me a report on his investigation into the effect of imports of aluminum articles on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised me of his opinion that aluminum articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States), I concurred in the Secretary's finding that aluminum articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of aluminum articles, as defined in clause 1 of Proclamation 9704, by imposing a 10 percent ad valorem tariff on such articles imported from most countries. I further stated that any country with which we have a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports from that country. I also noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that I determine that imports from that country no longer threaten to impair the national security, I may remove or modify the restriction on aluminum article imports from that country and, if necessary, make corresponding adjustments to the tariff as it applies to other countries as the national security interests of the United States require.

3. The United States has an important security relationship with the United Arab Emirates, including our shared commitment to supporting each other in addressing national security concerns in the Middle East, particularly in countering Iran's malign influence there; combatting violent extremism around the world; and maintaining the strong economic ties between our countries.

4. In light of the foregoing, the United States has engaged in discussions with the United Arab Emirates on alternative means to address the threatened impairment to our national security posed by aluminum article imports from the United Arab Emirates. On the basis of these discussions, the United States and the United Arab Emirates have now agreed on satisfactory alternative means to address this threat.

5. The United States has successfully concluded discussions with the United Arab Emirates on satisfactory alternative means to address the threatened impairment of the national security posed by aluminum imports from the United Arab Emirates, specifically a quota restricting the quantity of aluminum articles imported into the United States from the United Arab Emirates. This measure is expected to allow imports of aluminum from the United Arab Emirates to remain close to historical levels without meaningful increases, thus making it more likely that domestic capacity utilization will

be reasonably commensurate with the target level recommended in the Secretary's report. In my judgment, this measure will provide effective, long-term alternative means to address the contribution of the United Arab Emirates to the threatened impairment to our national security by restraining aluminum article exports from the United Arab Emirates to the United States, limiting export surges by the United Arab Emirates, and discouraging excess aluminum capacity and excess aluminum production. In light of this agreement, I have determined that aluminum article imports from the United Arab Emirates will no longer threaten to impair the national security and have decided to exclude the United Arab Emirates from the tariff proclaimed in Proclamation 9704. The United States will monitor the implementation and effectiveness of the measure agreed with the United Arab Emirates in addressing our national security needs, and this determination may be revisited, as appropriate.

6. In light of my determination to exclude the United Arab Emirates from the tariff proclaimed in Proclamation 9704, as amended, I have considered whether it is necessary and appropriate in light of our national security interests to make any corresponding adjustments to such tariff as it applies to other countries. I have determined that, in light of the agreed-upon measure with the United Arab Emirates, it is necessary and appropriate, at this time, to maintain the current tariff level as it applies to other countries.

7. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

8. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) Clause 2 of Proclamation 9704, as amended, is further amended in the second sentence by deleting ''and'' before ''(g)'' and inserting before the period at the end: '', and (h) on or after 12:01 a.m. eastern standard time on February 3, 2021, from all countries except Argentina, Australia, Canada, Mexico, and the United Arab Emirates.''.

(2) Clauses 1 and 4 of Proclamation 9776 of August 29, 2018 (Adjusting Imports of Aluminum Into the United States) are amended by replacing, in each instance, ''subheadings 9903.85.05 and 9903.85.06'' with ''subheadings 9903.85.05 through 9903.85.08''.

(3) The ''Article Description'' for subheading 9903.85.01 of the HTSUS is amended by replacing ''of Argentina, of Australia, of Canada, of Mexico'' with ''of Argentina, of Australia, of Canada, of Mexico, of the United Arab Emirates''.

(4) The superior text to subheading 9903.85.11 of the HTSUS is amended by replacing ''of Argentina'' with ''of Argentina and of the United Arab Emirates'', and the ''Article Description'' for subheading 9903.85.11 of the HTSUS is amended by replacing ''9903.85.05 and 9903.85.06'' with ''9903.85.05 through 9903.85.08''.

(5) In order to implement quantitative limitations on aluminum article imports from the United Arab Emirates, subchapter III of chapter 99 of the HTSUS is amended as provided for in Part A of the Annex to this proclamation. For purposes of administering these quantitative limitations, the annual aggregate limits set out in Part B of the Annex to this proclamation

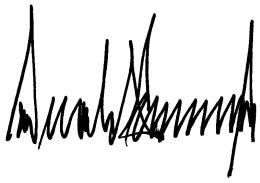
shall apply for the period starting with calendar year 2021 and for subsequent years, unless modified or terminated. The quantitative limitations for the United Arab Emirates, which for calendar year 2021 shall take into account all aluminum article imports since January 1, 2021, shall be effective for aluminum articles entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 3, 2021, and shall be implemented by U.S. Customs and Border Protection (CBP) of the Department of Homeland Security as soon as practicable. The Secretary shall monitor the implementation of these quantitative limitations and shall, in consultation with the United States Trade Representative, inform the President of any circumstance that in the Secretary's opinion might indicate that an adjustment of the quantitative limitations is necessary.

(6) The modifications made by clauses 1 through 5 of this proclamation and the Annex to this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 3, 2021, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(7) Any imports of aluminum articles from the United Arab Emirates that were admitted into a U.S. foreign trade zone under ''privileged foreign status'' as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern standard time on February 3, 2021, shall not be subject, upon entry for consumption made on or after that date and time, to the additional 10 percent ad valorem rate of duty imposed by Proclamation 9704, as amended, and shall be subject to the quantitative limitations established in this proclamation.

(8) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of January, in the year of our Lord two thousand and twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



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ANNEX

TO MODIFY CERTAIN PROVISIONS OF CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

A. Subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified below, with the material in the new tariff provisions inserted in the columns labeled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1- Special," and "Rates of Duty 2", respectively. The modifications shall be effective for goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 3, 2021. Quota amounts are calculated beginning on January 1 of each calendar year, including for calendar year 2021.

1. The text of subdivision (a)(ii) of U.S. note 19 is modified by deleting "9903.85.05 and 9903.85.06" and by inserting in lieu thereof "9903.85.05 through 9903.85.08".

2. The text of subdivision (b) of U.S. note 19 is modified by deleting "9903.85.05 and 9903.85.06" and by inserting in lieu thereof "9903.85.05 through 9903.85.08".

3. The text of subdivision (d) of U.S. note 19 is modified by deleting "9903.85.05 and 9903.85.06" and by inserting in lieu thereof "9903.85.05 through 9903.85.08".

4. The text of subdivision (e) of U.S. note 19 is modified by deleting "9903.85.05 and 9903.85.06" and by inserting in lieu thereof "9903.85.05 through 9903.85.08".

5. Subheadings 9903.85.05 and 9903.85.06 and the superior text thereto are replaced and supplemented with the following subheadings and superior texts, which are inserted in numerical sequence in subchapter III:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
	Except as provided in subheading 9903.85.11, aluminum products of Argentina enumerated in U.S. note 19(b) to this subchapter, if entered in aggregate quantities prescribed in subdivision (e) of such note for any calendar year starting on January 1, 2021 and for any portion thereof as prescribed in such subdivision (e):			
9903.85.05	Unwrought aluminum, provided for in heading 7601	The duty provided in the applicable subheading		
	Except as provided in subheading 9903.85.11, aluminum products of Argentina and the United Arab Emirates enumerated in U.S. note 19(b) to this subchapter, if entered in aggregate quantities prescribed in subdivision (e) of such note for any calendar year starting on January 1, 2021 and for any portion thereof as prescribed in such subdivision (e):			
9903.85.06	Wrought aluminum, provided for in headings 7604, 7605, 7606, 7607, 7608 or 7609; and castings and forgings of aluminum provided for in subheading 7616.99.51.....	The duty provided in the applicable subheading		
	Except as provided in subheading 9903.85.11, aluminum products of the United Arab Emirates numerated in U.S. note 19(b) to this subchapter, if entered in aggregate quantities prescribed in subdivision (e) of such note for any calendar year starting on January 1, 2021 and for any portion thereof as prescribed in such subdivision (e):			

9903.85.07	Unwrought aluminum, not alloyed, provided in subheading 7601.10	The duty provided in the applicable subheading		
9903.85.08	Unwrought aluminum, alloyed, provided for in subheading 7601.20	The duty provided in the applicable subheading		

B. For the purposes of administering the quantitative limitations applicable to subheadings 9903.85.06 through 9903.85.08 (as modified or created in part A of this annex), the following annual aggregate limits shall apply for the period starting with calendar year 2021 and for subsequent years, unless modified or terminated:

UNITED ARAB EMIRATES

Heading/ Subheading	Article Description	Quantitative Limitation
	Aluminum products of the United Arab Emirates enumerated in U.S. note 19(b) to this subchapter, if entered in aggregate quantities prescribed in subdivision (e) of such note for any calendar year starting on January 1, 2021 and for any portion thereof as prescribed in such subdivision (e):	
9903.85.06	Wrought aluminum, provided for in headings 7604, 7605,7606,7607, 7608 or 7609; and castings and forgings of aluminum provided for in subheading 7616.99.51.....	26,467,182 kilograms
9903.85.07	Unwrought aluminum, not alloyed, provided in subheading 7601.10.....	149,482,620 kilograms
9903.85.08	Unwrought aluminum, alloyed, provided for in subheading 7601.20.....	454,050,450 kilograms

[FR Doc. 2021–01711

Filed 1–22–21; 8:45 am]

Billing code 7020–02–C

Presidential Documents

Executive Order 13982 of January 19, 2021

Care of Veterans With Service in Uzbekistan

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. The Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall consider whether to designate veterans who served on active duty in Uzbekistan between October 1, 2001, and December 31, 2005, as veterans who served on active duty in a theater of combat operations pursuant to section 1710(e)(1)(D) of title 38, United States Code.

Sec. 2. Within 365 days of the date of this order, the Secretary of Defense shall conduct a rigorous study investigating toxic exposure by members of the Armed Forces deployed to the Karshi-Khanabad Air Base, Uzbekistan (Air Base), between October 1, 2001, and December 31, 2005. The Secretary of Defense shall submit a report summarizing the findings of the study to the President, through the Secretary of Veterans Affairs. The study shall include the following elements:

(a) A detailed assessment of the conditions at the Air Base between October 1, 2001, and December 31, 2005, including identification of any toxic substances contaminating the Air Base during such period, the exact locations of the toxic substances, the time frames of exposure to the toxic substances, the service members exposed to the toxic substances, and the circumstances of such exposure.

(b) A rigorous epidemiological study of any health consequences for members of the Armed Forces deployed to the Air Base between October 1, 2001, and December 31, 2005. This study shall be of equivalent rigor to studies used by the Department of Veterans Affairs to make determinations regarding diseases subject to presumptive service connections.

(c) An assessment of any causal link between exposure to any toxic substances identified in subsection (a) of this section and any health consequences studied under subsection (b) of this section.

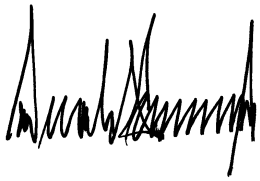
Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget related to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 19, 2021.

[FR Doc. 2021–01712
Filed 1–22–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13983 of January 19, 2021

Revocation of Executive Order 13770

By the authority vested in me as President of the United States by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Revocation.* Executive Order 13770 of January 28, 2017, ''Ethics Commitments by Executive Branch Appointees,'' is hereby revoked, effective at noon January 20, 2021. Employees and former employees subject to the commitments in Executive Order 13770 will not be subject to those commitments after noon January 20, 2021.

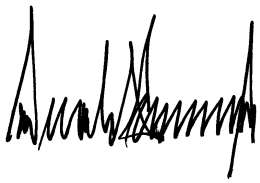
Sec. 2. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 19, 2021.

[FR Doc. 2021–01713
Filed 1–22–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13984 of January 19, 2021

Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code:

I, DONALD J. TRUMP, President of the United States of America, find that additional steps must be taken to deal with the national emergency related to significant malicious cyber-enabled activities declared in Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities), as amended, to address the use of United States Infrastructure as a Service (IaaS) products by foreign malicious cyber actors. IaaS products provide persons the ability to run software and store data on servers offered for rent or lease without responsibility for the maintenance and operating costs of those servers. Foreign malicious cyber actors aim to harm the United States economy through the theft of intellectual property and sensitive data and to threaten national security by targeting United States critical infrastructure for malicious cyber-enabled activities. Foreign actors use United States IaaS products for a variety of tasks in carrying out malicious cyber-enabled activities, which makes it extremely difficult for United States officials to track and obtain information through legal process before these foreign actors transition to replacement infrastructure and destroy evidence of their prior activities; foreign resellers of United States IaaS products make it easier for foreign actors to access these products and evade detection. This order provides authority to impose record-keeping obligations with respect to foreign transactions. To address these threats, to deter foreign malicious cyber actors' use of United States IaaS products, and to assist in the investigation of transactions involving foreign malicious cyber actors, the United States must ensure that providers offering United States IaaS products verify the identity of persons obtaining an IaaS account (''Account'') for the provision of these products and maintain records of those transactions. In appropriate circumstances, to further protect against malicious cyber-enabled activities, the United States must also limit certain foreign actors' access to United States IaaS products. Further, the United States must encourage more robust cooperation among United States IaaS providers, including by increasing voluntary information sharing, to bolster efforts to thwart the actions of foreign malicious cyber actors.

Accordingly, I hereby order:

Section 1. *Verification of Identity.* Within 180 days of the date of this order, the Secretary of Commerce (Secretary) shall propose for notice and comment regulations that require United States IaaS providers to verify the identity of a foreign person that obtains an Account. These regulations shall, at a minimum:

(a) set forth the minimum standards that United States IaaS providers must adopt to verify the identity of a foreign person in connection with the opening of an Account or the maintenance of an existing Account, including:

(i) the types of documentation and procedures required to verify the identity of any foreign person acting as a lessee or sub-lessee of these products or services;

(ii) records that United States IaaS providers must securely maintain regarding a foreign person that obtains an Account, including information establishing:

(A) the identity of such foreign person and the person's information, including name, national identification number, and address;

(B) means and source of payment (including any associated financial institution and other identifiers such as credit card number, account number, customer identifier, transaction identifiers, or virtual currency wallet or wallet address identifier);

(C) electronic mail address and telephonic contact information, used to verify a foreign person's identity; and

(D) internet Protocol addresses used for access or administration and the date and time of each such access or administrative action, related to ongoing verification of such foreign person's ownership of such an Account; and

(iii) methods for limiting all third-party access to the information described in this subsection, except insofar as such access is otherwise consistent with this order and allowed under applicable law;

(b) take into consideration the type of Account maintained by United States IaaS providers, methods of opening an Account, and types of identifying information available to accomplish the objectives of identifying foreign malicious cyber actors using any such products and avoiding the imposition of an undue burden on such providers; and

(c) permit the Secretary, in accordance with such standards and procedures as the Secretary may delineate and in consultation with the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, to exempt any United States IaaS provider, or any specific type of Account or lessee, from the requirements of any regulation issued pursuant to this section. Such standards and procedures may include a finding by the Secretary that a provider, Account, or lessee complies with security best practices to otherwise deter abuse of IaaS products.

Sec. 2. *Special Measures for Certain Foreign Jurisdictions or Foreign Persons.* (a) Within 180 days of the date of this order, the Secretary shall propose for notice and comment regulations that require United States IaaS providers to take any of the special measures described in subsection (d) of this section if the Secretary, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence and, as the Secretary deems appropriate, the heads of other executive departments and agencies (agencies), finds:

(i) that reasonable grounds exist for concluding that a foreign jurisdiction has any significant number of foreign persons offering United States IaaS products that are used for malicious cyber-enabled activities or any significant number of foreign persons directly obtaining United States IaaS products for use in malicious cyber-enabled activities, in accordance with subsection (b) of this section; or

(ii) that reasonable grounds exist for concluding that a foreign person has established a pattern of conduct of offering United States IaaS products that are used for malicious cyber-enabled activities or directly obtaining United States IaaS products for use in malicious cyber-enabled activities.

(b) In making findings under subsection (a) of this section on the use of United States IaaS products in malicious cyber-enabled activities, the Secretary shall consider any information the Secretary determines to be relevant, as well as information pertaining to the following factors:

(i) Factors related to a particular foreign jurisdiction, including:

(A) evidence that foreign malicious cyber actors have obtained United States IaaS products from persons offering United States IaaS products in that foreign jurisdiction, including whether such actors obtained such IaaS products through Reseller Accounts;

(B) the extent to which that foreign jurisdiction is a source of malicious cyber-enabled activities; and

(C) Whether the United States has a mutual legal assistance treaty with that foreign jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about activities involving United States IaaS products originating in or routed through such foreign jurisdiction; and

(ii) Factors related to a particular foreign person, including:

(A) the extent to which a foreign person uses United States IaaS products to conduct, facilitate, or promote malicious cyber-enabled activities;

(B) the extent to which United States IaaS products offered by a foreign person are used to facilitate or promote malicious cyber-enabled activities;

(C) the extent to which United States IaaS products offered by a foreign person are used for legitimate business purposes in the jurisdiction; and

(D) the extent to which actions short of the imposition of special measures pursuant to subsection (d) of this section are sufficient, with respect to transactions involving the foreign person offering United States IaaS products, to guard against malicious cyber-enabled activities.

(c) In selecting which special measure or measures to take under this section, the Secretary shall consider:

(i) whether the imposition of any special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for United States IaaS providers;

(ii) the extent to which the imposition of any special measure or the timing of the special measure would have a significant adverse effect on legitimate business activities involving the particular foreign jurisdiction or foreign person; and

(iii) the effect of any special measure on United States national security, law enforcement investigations, or foreign policy.

(d) The special measures referred to in subsections (a), (b), and (c) of this section are as follows:

(i) Prohibitions or Conditions on Accounts within Certain Foreign Jurisdictions: The Secretary may prohibit or impose conditions on the opening or maintaining with any United States IaaS provider of an Account, including a Reseller Account, by any foreign person located in a foreign jurisdiction found to have any significant number of foreign persons offering United States IaaS products used for malicious cyber-enabled activities, or by any United States IaaS provider for or on behalf of a foreign person; and

(ii) Prohibitions or Conditions on Certain Foreign Persons: The Secretary may prohibit or impose conditions on the opening or maintaining in the United States of an Account, including a Reseller Account, by any United States IaaS provider for or on behalf of a foreign person, if such an Account involves any such foreign person found to be offering United States IaaS products used in malicious cyber-enabled activities or directly obtaining United States IaaS products for use in malicious cyber-enabled activities.

(e) The Secretary shall not impose requirements for United States IaaS providers to take any of the special measures described in subsection (d) of this section earlier than 180 days following the issuance of final regulations described in section 1 of this order.

Sec. 3. *Recommendations for Cooperative Efforts to Deter the Abuse of United States IaaS Products.* (a) Within 120 days of the date of this order, the Attorney General and the Secretary of Homeland Security, in coordination with the Secretary and, as the Attorney General and the Secretary of Homeland Security deem appropriate, the heads of other agencies, shall engage and solicit feedback from industry on how to increase information sharing and collaboration among IaaS providers and between IaaS providers and the agencies to inform recommendations under subsection (b) of this section.

(b) Within 240 days of the date of this order, the Attorney General and the Secretary of Homeland Security, in coordination with the Secretary, and, as the Attorney General and Secretary of Homeland Security deem appropriate, the heads of other agencies, shall develop and submit to the President a report containing recommendations to encourage:

(i) voluntary information sharing and collaboration, among United States IaaS providers; and

(ii) information sharing between United States IaaS providers and appropriate agencies, including the reporting of incidents, crimes, and other threats to national security, for the purpose of preventing further harm to the United States.

(c) The report and recommendations provided under subsection (b) of this section shall consider existing mechanisms for such sharing and collaboration, including the Cybersecurity Information Sharing Act (6 U.S.C. 1503 *et seq.*), and shall identify any gaps in current law, policy, or procedures. The report shall also include:

(i) information related to the operations of foreign malicious cyber actors, the means by which such actors use IaaS products within the United States, malicious capabilities and tradecraft, and the extent to which persons in the United States are compromised or unwittingly involved in such activity;

(ii) recommendations for liability protections beyond those in existing law that may be needed to encourage United States IaaS providers to share information among each other and with the United States Government; and

(iii) recommendations for facilitating the detection and identification of Accounts and activities that involve foreign malicious cyber actors.

Sec. 4. *Ensuring Sufficient Resources for Implementation.* The Secretary, in consultation with the heads of such agencies as the Secretary deems appropriate, shall identify funding requirements to support the efforts described in this order and incorporate such requirements into its annual budget submissions to the Office of Management and Budget.

Sec. 5. *Definitions.* For the purposes of this order, the following definitions apply:

(a) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) The term ''foreign jurisdiction'' means any country, subnational territory, or region, other than those subject to the civil or military jurisdiction of the United States, in which any person or group of persons exercises sovereign de facto or de jure authority, including any such country, subnational territory, or region in which a person or group of persons is assuming to exercise governmental authority whether such a person or group of persons has or has not been recognized by the United States;

(c) The term ''foreign person'' means a person that is not a United States person;

(d) The term ''Infrastructure as a Service Account'' or ''Account'' means a formal business relationship established to provide IaaS products to a person in which details of such transactions are recorded.

(e) The term ''Infrastructure as a Service Product'' means any product or service offered to a consumer, including complimentary or ''trial'' offerings,

that provides processing, storage, networks, or other fundamental computing resources, and with which the consumer is able to deploy and run software that is not predefined, including operating systems and applications. The consumer typically does not manage or control most of the underlying hardware but has control over the operating systems, storage, and any deployed applications. The term is inclusive of ''managed'' products or services, in which the provider is responsible for some aspects of system configuration or maintenance, and ''unmanaged'' products or services, in which the provider is only responsible for ensuring that the product is available to the consumer. The term is also inclusive of ''virtualized'' products and services, in which the computing resources of a physical machine are split between virtualized computers accessible over the internet (e.g., ''virtual private servers''), and ''dedicated'' products or services in which the total computing resources of a physical machine are provided to a single person (e.g., ''bare-metal'' servers);

(f) The term ''malicious cyber-enabled activities'' refers to activities, other than those authorized by or in accordance with United States law that seek to compromise or impair the confidentiality, integrity, or availability of computer, information, or communications systems, networks, physical or virtual infrastructure controlled by computers or information systems, or information resident thereon;

(g) The term ''person'' means an individual or entity;

(h) The term ''Reseller Account'' means an Infrastructure as a Service Account established to provide IaaS products to a person who will then offer those products subsequently, in whole or in part, to a third party.

(i) The term ''United States Infrastructure as a Service Product'' means any Infrastructure as a Service Product owned by any United States person or operated within the territory of the United States of America;

(j) The term ''United States Infrastructure as a Service Provider'' means any United States Person that offers any Infrastructure as a Service Product;

(k) The term ''United States person'' means any United States citizen, lawful permanent resident of the United States as defined by the Immigration and Nationality Act, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person located in the United States;

Sec. 6. *Amendment to Reporting Authorizations.* Section (9) of Executive Order 13694, as amended, is further amended to read as follows:

''Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and the Secretary of Commerce, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).''

Sec. 7. *General Provisions.* (a) The Secretary, in consultation with the heads of such other agencies as the Secretary deems appropriate, is hereby authorized to take such actions, including the promulgation of rules and regulations, and employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary may redelegate any of these functions to other officers within the Department of Commerce, consistent with applicable law. All departments and agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

(b) Nothing in this order shall be construed to impair or otherwise affect:

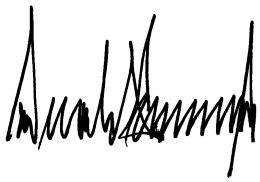
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) Nothing in this order prohibits or otherwise restricts authorized intelligence, military, law enforcement, or other activities in furtherance of national security or public safety activities.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 19, 2021.

[FR Doc. 2021–01714
Filed 1–22–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Memorandum of January 19, 2021

Declassification of Certain Materials Related to the FBI's Crossfire Hurricane Investigation

Memorandum for the Attorney General[,] the Director of National Intelligence[, and] the Director of the Central Intelligence Agency

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. *Declassification and Release.* At my request, on December 30, 2020, the Department of Justice provided the White House with a binder of materials related to the Federal Bureau of Investigation's Crossfire Hurricane investigation. Portions of the documents in the binder have remained classified and have not been released to the Congress or the public. I requested the documents so that a declassification review could be performed and so I could determine to what extent materials in the binder should be released in unclassified form.

I determined that the materials in that binder should be declassified to the maximum extent possible. In response, and as part of the iterative process of the declassification review, under a cover letter dated January 17, 2021, the Federal Bureau of Investigation noted its continuing objection to any further declassification of the materials in the binder and also, on the basis of a review that included Intelligence Community equities, identified the passages that it believed it was most crucial to keep from public disclosure. I have determined to accept the redactions proposed for continued classification by the FBI in that January 17 submission.

I hereby declassify the remaining materials in the binder. This is my final determination under the declassification review and I have directed the Attorney General to implement the redactions proposed in the FBI's January 17 submission and return to the White House an appropriately redacted copy.

My decision to declassify materials within the binder is subject to the limits identified above and does not extend to materials that must be protected from disclosure pursuant to orders of the Foreign Intelligence Surveillance Court and does not require the disclosure of certain personally identifiable information or any other materials that must be protected from disclosure under applicable law. Accordingly, at my direction, the Attorney General has conducted an appropriate review to ensure that materials provided in the binder may be disclosed by the White House in accordance with applicable law.

Sec. 2. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

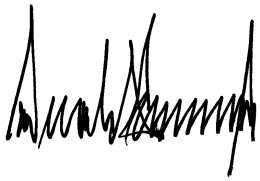
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by

any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Attorney General is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 19, 2021

[FR Doc. 2021–01717
Filed 1–22–21; 8:45 am]
Billing code 4410–19–P

Presidential Documents

Memorandum of January 19, 2021

Deferred Enforced Departure for Certain Venezuelans

Memorandum for the Secretary of State [and] the Secretary of Homeland Security

The autocratic government of Nicolas Maduro has consistently violated the sovereign freedoms possessed by the Venezuelan people. Through force and fraud, the Maduro regime is responsible for the worst humanitarian crisis in the Western Hemisphere in recent memory. A catastrophic economic crisis and shortages of basic goods and medicine have forced about five million Venezuelans to flee the country, often under dangerous conditions.

This Administration has imposed sanctions against Maduro and his regime, and I have recognized the President of the Venezuelan National Assembly, Juan Guaidó, as the interim president of the country. The deteriorative condition within Venezuela, which presents an ongoing national security threat to the safety and well-being of the American people, warrants the deferral of the removal of Venezuelan nationals who are present in the United States.

Pursuant to my constitutional authority to conduct the foreign relations of the United States, I have determined that it is in the foreign policy interest of the United States to defer the removal of any national of Venezuela, or alien without nationality who last habitually resided in Venezuela, subject to the conditions and exceptions provided below.

Accordingly, I hereby direct you to take appropriate measures to defer for 18 months the removal of any national of Venezuela, or alien without nationality who last habitually resided in Venezuela, who is present in the United States as of January 20, 2021, except for aliens who:

(1) have voluntarily returned to Venezuela or their country of last habitual residence outside the United States;

(2) have not continuously resided in the United States since January 20, 2021;

(3) are inadmissible under section 212(a)(3) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(3)) or removable under section 237(a)(4) of the INA (8 U.S.C. 1227(a)(4));

(4) who have been convicted of any felony or 2 or more misdemeanors committed in the United States, or who meet the criteria set forth in section 208(b)(2)(A) of the INA (8 U.S.C. 1158(b)(2)(A));

(5) who were deported, excluded, or removed, prior to January 20, 2021;

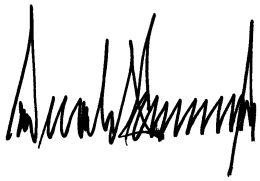
(6) who are subject to extradition;

(7) whose presence in the United States the Secretary of Homeland Security has determined is not in the interest of the United States or presents a danger to public safety; or

(8) whose presence in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States.

I further direct the Secretary of Homeland Security to take appropriate measures to authorize employment for aliens whose removal has been deferred, as provided by this memorandum, for the duration of such deferral.

The Secretary of Homeland Security is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 19, 2021

[FR Doc. 2021–01718
Filed 1–22–21; 8:45 am]
Billing code 4410–10–P

Rules and Regulations

Federal Register

Vol. 86, No. 14

Monday, January 25, 2021

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[Docket No: USCIS 2020–0013]

RIN 1615–AC57

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1208

[A.G. Order No. 4975–2021]

RIN 1125–AB08

Security Bars and Processing; Delay of Effective Date

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security (''DHS''); Executive Office for Immigration Review, Department of Justice (''DOJ'')

ACTION: Final rule; delay of effective date.

SUMMARY: On December 23, 2020, DHS and DOJ (collectively, ''the Departments'') published a final rule to clarify that the danger to the security of the United States statutory bar to eligibility for asylum and withholding of removal encompass certain emergency public health concerns and make certain other changes. The Departments are delaying the rule's effective date for 60 days.

DATES: As of January 21, 2021, the effective date of the final rule published at 85 FR 84160 (Dec. 23, 2020) is delayed until March 22, 2021.

FOR FURTHER INFORMATION CONTACT: For USCIS: Andrew Davidson, Asylum Division Chief, Refugee, Asylum and International Affairs Directorate, U.S. Citizenship and Immigration Services, DHS; telephone 240–721–3000 (not a toll-free call).

For EOIR: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background and Basis for Delay

On December 23, 2020, the Departments published a final rule (''Security Bars rule'') to amend existing regulations to clarify that in certain circumstances there are ''reasonable grounds for regarding [an] alien as a danger to the security of the United States'' or ''reasonable grounds to believe that [an] alien is a danger to the security of the United States'' based on emergency public health concerns generated by a communicable disease, making the alien ineligible to be granted asylum in the United States under section 208 of the Immigration and Nationality Act or the protection of withholding of removal under that Act or subsequent regulations (because of the threat of torture). *See* Security Bars and Processing, 85 FR 84160 *et seq.* (Dec. 23, 2020).

On January 20, 2021, the White House Chief of Staff issued a memorandum asking agencies to consider delaying, consistent with applicable law, the effective dates of any rules that have published and not yet gone into effect, for the purpose of allowing the President's appointees and designees to review questions of fact, law, and policy raised by those regulations. *See* Memorandum for the Heads of Executive Departments and Agencies from Ronald A. Klain, Assistant to the President and Chief of Staff, *Re: Regulatory Freeze Pending Review* (Jan. 20, 2021). This action is consistent with that memorandum.

The Departments have good cause to delay this rule's effective date without advance notice and comment because a permissible path to implementation of the rule is not apparent due to a preliminary injunction against a related rule. On December 11, 2020, the Departments issued a rule titled *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review.*[1] On January 8, 2021, a district court preliminarily enjoined the Departments ''from implementing, enforcing, or applying the [December 11] rule . . . or any related policies or procedures.''[2]

Implementing the Security Bars rule will not be viable given this injunction. Most prominently, the Security Bars rule relies upon the framework for applying bars to asylum during credible fear processing that was established in the December 11 rule.[3] That is not possible given the injunction. The regulatory text of significant portions of the Security Bars rule is also embedded within and repeats regulatory text that was established by the December 11 rule.[4]

To implement the full Security Bars rule—and effectively reinsert or rely upon provisions that the *Pangea* court has enjoined—might run afoul of the court's injunction. Because the court's injunction is already effective and it would be impracticable to engage in notice and comment procedures in advance of the scheduled January 22 effective date, the Departments are proceeding with this final rule.[5]

The Acting Secretary of Homeland Security, David P. Pekoske, having

[1] *See* 85 FR 80274 (Dec. 11, 2020).

[2] *See Pangea Legal Servs.* v. *Dep't of Homeland Security,* No. 20–09253–JD, 2021 WL 75756, at *7 (N.D. Cal. Jan. 8, 2021). The *Pangea* court held that plaintiffs showed a likelihood that Chad F. Wolf, who approved the December 11 rule in his capacity as Acting Secretary of Homeland Security, did not have valid authority to act in that capacity. *See id.* *6. Following the court's ruling, Peter T. Gaynor and Mr. Wolf took steps to ratify the December 11 rule. *See* DHS Delegation No. 23028, Delegation to the Under Secretary for Strategy, Policy, and Plans to Act on Final Rules, Regulations, and Other Matters (Jan. 12, 2021); Chad F. Wolf, Ratification (Jan. 14, 2021). By issuing this rule, the Departments state no position on Mr. Gaynor or Mr. Wolf's actions or authority, the outcome thus far in *Pangea,* or the effects of any further actions.

[3] *See, e.g.,* 85 FR at 84176 (''As noted, the [Security Bars] final rule is not, as the NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage because, in the interim between the NPRM and the final rule, the [December 11 rule] did so for all of the bars to eligibility for asylum and withholding of removal.''); *id.* at 84189 (describing changes made in the Security Bars rule ''to certain regulatory provisions not addressed in the proposed rule as necessitated by the intervening promulgation of the [December 11] Rule.'').

[4] *Compare, e.g.,* 85 FR at 84194–84198 (revising 8 CFR 208.30, 235.6, 1208.30, and 1235.6, among other provisions) *and* 85 FR at 80390–80401 (same).

[5] *See* 5 U.S.C. 553(b)(B), (d) (providing an exception from the notice and comment requirements when an agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,'' and providing additional exceptions with respect to the delayed effective date).

reviewed and approved this document, has delegated the authority to electronically sign this document to Sharmistha Das, who is the Deputy General Counsel for DHS, for purposes of publication in the **Federal Register**.

Sharmistha Das,

Deputy General Counsel, U.S. Department of Homeland Security.

Monty Wilkinson,

Acting Attorney General, Department of Justice.

[FR Doc. 2021–01683 Filed 1–21–21; 4:15 pm]

BILLING CODE 4410–30–P 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0800; Airspace Docket No. 20–ANM–43]

RIN 2120–AA66

Revocation of Class D and Amendment of Class E Airspace; Gillette, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class D airspace, establishes a Class E surface area, modifies the Class E airspace as an extension to the surface area and modifies the Class E airspace extending upward from 700 feet AGL at Northeast Wyoming Regional Airport, Gillette, WY. In addition, this action removes the VOR/DME from the legal description and replaces the outdated term Airport Facility/Directory with the term Chart Supplement. It also makes two minor administrative corrections noted in the Notice of Proposed Rulemaking (NPRM); the airport name is updated and the Class E surface area is identified as new airspace rather than amended airspace.

After being informed that the Airport Traffic Control Tower at Northeast Wyoming Regional Airport is closed permanently, the FAA found it necessary to create new airspace and amend the existing airspace for the safety and management of Instrument Flight Rule (IFR) operations at this airport.

DATES: Effective 0901 UTC, April 22, 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: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code (U.S.C.). 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 removes the Class D, establishes a Class E surface area, modifies the Class E airspace as an extension to the surface area and modifies the Class E airspace extending upward from 700 feet AGL at Northeast Wyoming Regional Airport, Gillette, WY to support IFR operations.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 57806; September 16, 2020) for Docket No. FAA–2020–0800 to remove the Class D airspace and modify the following: Class E surface area, the Class E airspace as an extension to the surface area and the Class E airspace extending upward from 700 feet AGL at Gillette-County Airport, Gillette, WY, in support of IFR operations. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received with multiple concerns. The commenter was troubled by the language used in the NPRM and concerned it would create difficulty in converting the airspace from Class D to Class E for the airport management team. This included logistical and technical steps in changing the airport structure, definitions of Class D and Class E airspace, equipment and techniques used for changing the airspace, who will monitor the change process, the airport management team's role and responsibilities in completing the change, and an expected timeline. While additional information needed by the airport management team is available and a point of contact provided, no one got in touch with this office or the facility with jurisdiction for the overlying airspace to enquire about information contained in the NPRM. The request for comment was based on the belief that the commenter has a basic knowledge of and understanding about airspace and the equipment and operating rules for each class of airspace. Controlled airspace is airspace of defined dimensions within which ATC service is provided to IFR and VFR flights in accordance with the airspace classification. Within controlled airspace, all aircraft operators are subject to certain qualification, operating, and aircraft equipage requirements (see Title 14 CFR part 91). Controlled airspace in the United States is designated in 14 CFR part 71. Changing the airspace designation is an administrative task. It involves no actions to the physical environment of the airport or its structures. The ''timeline'', also known as the effective date, of the change in the airspace designation has been determined by FAA orders to ensure safety in execution of that change.

The commenter was also concerned that issues related to possible effects on the entire airport, including civil aviation and the airport's overall safety, were not considered in the proposed rule. In addition, the commenter had questions regarding what standards and criteria were to be used in considering the effectiveness of the changes. The airspace design specialist establishes, modifies or revokes airspace based on criteria documented in FAA Orders by their Flight Standards Division and Airspace Policy Regulations Group. The specialist takes into account, as a prime consideration, the safety and efficiency of air traffic operations in consultation with local Air Traffic Control. In addition, the facility with jurisdiction over the airspace conducts and documents a safety risk analysis to

consider potential safety issues with the new airspace before implementation. Post implementation, the Air Traffic Control facility managing air traffic in the area takes appropriate action to resolve observed or reported issues.

Additional concerns by the commenter included the lack of details on precautions for airspace changes amid a public health crisis. There is no face-to-face interaction required between FAA personnel and the airport management team so there is no increased risk due to the public health crisis.

Finally, the commenter identified the importance of considering both long-term and short-term environmental costs during the proposed rule to provide a comprehensive expectation of the costs for the public before the application phase of the rule. The proposal is reviewed for environmental impacts and extraordinary circumstances that might arise from the proposal. The FAA completed an environmental review and there are no significant environmental costs anticipated with the rule. It should be noted that the airspace does not define where aircraft can fly or do fly, it only defines specific equipment requirements and pilot responsibilities for each class of airspace.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004 and 6005 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.

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

The FAA is amending 14 CFR part 71 by removing the Class D airspace and establishing a Class E surface area. The FAA is also modifying the Class E airspace as an extension to the Class E surface area and the Class E airspace extending upward from 700 feet AGL at Northeast Wyoming Regional Airport, Gillette, WY.

The FAA was informed that the Airport Traffic Control Tower at Northeast Wyoming Regional Airport is closed, which is a basic qualification for the establishment of Class D airspace. As a result, the FAA is removing the Class D airspace and establishing a Class E surface area at the airport. The Class E surface airspace is established at 5 miles to ensure departures are contained in the surface area until reaching 700 feet AGL.

The Class E airspace extending upward from the surface as an extension to the Class E surface area is expanded to 3.4 miles each side of the 170° bearing from 3 miles to 12 miles (formerly 12.2 miles) south of the airport. This adjustment will protect aircraft as they descend through 1,000 feet AGL, while using the RNAV and ILS approaches to runway 34.

The Class E airspace extending upward from 700 feet is modified to within 4 miles each side of the 170° and 350° bearings (reduced from 6.1 miles east and 8.3 miles west) and extends 14 miles south (reduced from 15.3 miles) and 11 miles north (reduced from 16.1miles). The additional airspace is no longer needed to protect departing aircraft to 1,200 feet and arrivals as they descend through 1,500 feet AGL. This action removes the Class E airspace extending upward from 1,200 feet as it is redundant with the Denver E6 airspace and no longer needed.

In addition, the use of the term Airport Facility/Directory is replaced with Chart Supplement and the legal descriptions for the Class E airspace extending upward from the surface as an extension to the Class E surface area and the Class E airspace extending upward from 700 feet is rewritten to eliminate the use of the VOR/DME as a reference point. The VOR/DME is no longer needed to adequately describe the airspace.

Following publication of the NPRM in the **Federal Register** the name of the airport was changed to Northeast Wyoming Regional Airport this action updates the name and the geographical coordinates to match the FAA database. Also, the Class E surface area was identified in the NPRM as being amended. This was in error. This airspace was new airspace established to replace the Class D airspace. This action correctly defines the Class E surface area as new airspace.

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 (E.O.) 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 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 WY D Gillette, WY [Remove]

Gillette-Campbell County Airport, WY
(Lat. 44°20′56″ N, long. 105°32′22″ W)

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM WY E2 Gillette, WY [New]

Northeast Wyoming Regional Airport, WY
(Lat. 44°20′56″ N, long. 105°32′22″ W)

That airspace extending upward from the surface to and including 6,900 feet MSL within a 5-mile radius of the Northeast Wyoming Regional Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM WY E4 Gillette, WY [Amended]

Northeast Wyoming Regional Airport, WY
(Lat. 44°20′56″ N, long. 105°32′22″ W)

That airspace extending upward from the surface within 3.4 miles each side of the Northeast Wyoming Regional Airport 170° bearing extending from the 5-mile radius to 12 miles south of the airport.

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

* * * * *

ANM WY E5 Gillette, WY [Amended]

Northeast Wyoming Regional Airport, WY
(Lat. 44°20′56″ N, long. 105°32′22″ W)

That airspace extending upward from 700 feet above the surface of the earth within 4 miles each side of the Northeast Wyoming Regional Airport 170° bearing extending from the 5-mile radius to 14 miles south of the airport, and that airspace 4 miles each side of the 350° bearing extending from the 5-mile radius to 11 miles north of the airport.

Issued in Seattle, Washington, on January 14, 2021.

Byron Chew,

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

[FR Doc. 2021–01306 Filed 1–22–21; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AF06

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending the margin requirements for uncleared swaps (''Final Rule'') for swap dealers (''SD'') and major swap participants (''MSP'') for which there is not a prudential regulator (''CFTC Margin Rule''). The Final Rule amends the CFTC Margin Rule to permit the application of a minimum transfer amount (''MTA'') of up to $50,000 for each separately managed account (''SMA'') of a legal entity that is a counterparty to an SD or MSP in an uncleared swap transaction and to permit the application of separate MTAs for initial margin (''IM'') and variation margin (''VM'').

DATES: This Final Rule is effective February 24, 2021.

FOR FURTHER INFORMATION CONTACT: Joshua B. Sterling, Director, 202–418–6056, *jsterling@cftc.gov;* Thomas J. Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Warren Gorlick, Associate Director, 202–418–5195, *wgorlick@cftc.gov;* Liliya Bozhanova, Special Counsel, 202–418–6232, *lbozhanova@cftc.gov;* or Carmen Moncada-Terry, Special Counsel, 202–418–5795, *cmoncada-terry@cftc.gov,* Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

In January 2016, the Commission adopted Regulations 23.150 through 23.161, namely the CFTC Margin Rule,[1] to implement section 4s(e) of the Commodity Exchange Act (''CEA''),[2] which requires SDs and MSPs for which there is not a prudential regulator[3] (''covered swap entity'' or ''CSE'') to meet minimum IM and VM requirements adopted by the Commission by rule or regulation.

Regulations 23.152 and 23.153 require CSEs to collect or post, each business day, VM[4] for uncleared swap transactions with each counterparty that is an SD, MSP, or financial end user,[5] and IM[6] for uncleared swap transactions for each counterparty that is an SD, MSP, or a financial end user that has material swaps exposure.[7] IM posted or collected by a CSE must be held by one or more custodians that are not affiliated with the CSE or the counterparty.[8] VM posted or collected by a CSE is not required to be maintained with a custodian.[9]

To alleviate the operational burdens associated with making de minimis margin transfers without resulting in an unacceptable level of uncollateralized credit risk, Regulations 23.152(b)(3) and 23.153(c) provide that a CSE is not required to collect or post IM or VM with a counterparty until the combined amount of such IM and VM, as computed under Regulations 23.154 and 23.155 respectively, exceeds an MTA of $500,000.[10] The term MTA (or minimum transfer amount) is further defined in Regulation 23.151 as a combined amount of IM and VM, not exceeding $500,000, under which no exchange of IM or VM is required.[11] Once the MTA is exceeded, the SD or MSP must collect or post the full

[1] *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150—23.159, 23.161. In May 2016, the Commission amended the CFTC Margin Rule to add Regulation 23.160, 17 CFR 23.160, providing rules on its cross-border application. *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016). Commission regulations are found at 17 CFR part 1 *et seq.* (2017), and may be accessed through the Commission's website, *https://www.cftc.gov.*

[2] 7 U.S.C. 6s(e) (capital and margin requirements).

[3] CEA section 1a(39), 7 U.S.C. 1a(39) (defining the term ''prudential regulator'' to include the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The definition of prudential regulator specifies the entities for which these agencies act as prudential regulators.

[4] VM (or variation margin), as defined in Regulation 23.151, is the collateral provided by a party to its counterparty to meet the performance of its obligation under one or more uncleared swaps between the parties as a result of a change in the value of such obligations since the trade was executed or the last time such collateral was provided. 17 CFR 23.151.

[5] *See* definition of ''financial end user'' in Regulation 23.151. In general, the definition covers entities involved in regulated financial activity, including banks, brokers, intermediaries, advisers, asset managers, collective investment vehicles, and insurers. 17 CFR 23.151.

[6] IM (or initial margin) is the collateral (calculated as provided by § 23.154 of the Commission's regulations) that is collected or posted in connection with one or more uncleared swaps pursuant to § 23.152. IM is intended to secure potential future exposure following default of a counterparty (*i.e.,* adverse changes in the value of an uncleared swap that may arise during the period of time when it is being closed out). *See* CFTC Margin Rule, 81 FR at 683.

[7] 17 CFR 23.152; 17 CFR 23.153.

[8] *See* 17 CFR 23.157(a).

[9] Regulation 23.157 does not require VM to be maintained in a custodial account. 17 CFR 23.157.

[10] 17 CFR 23.152(b)(3); 17 CFR 23.153(c); 81 FR at 653.

[11] 17 CFR 23.151 (defining the term ''minimum transfer amount'').

amount of both IM and VM required to be exchanged with the counterparty.[12]

During the implementation of the CFTC Margin Rule, market participants identified certain operational and compliance burdens associated with the application of the MTA. To mitigate these burdens, the Division of Swap Dealer and Intermediary Oversight (''DSIO'') staff issued two no-action letters.[13]

B. DSIO No-Action Letter No. 17–12 Addressing the Application of MTA to SMAs

In February 2017, DSIO staff issued a no-action letter in response to a request for relief from the Securities Industry and Financial Markets Association's Asset Management Group (''SIFMA AMG'').[14] Staff stated that based on SIFMA AMG's representations, it would not recommend enforcement action against an SD that does not comply with the MTA requirements of Regulations 23.152(b)(3) or 23.153(c) with respect to the swaps of a legal entity that is the owner of multiple SMAs, provided that, among other conditions, the SD applies an MTA no greater than $50,000 to each SMA.

SIFMA AMG sought no-action relief on behalf of members—asset management firms whose clients include large institutional investors, such as pension plans and endowments, that hire asset managers to exercise investment discretion over portions of the clients' assets for management in SMAs—that enter into uncleared swaps with SDs that are registered with the Commission and are subject to the CFTC Margin Rule.[15] SIFMA AMG requested relief that would permit SDs entering into swaps with SMAs to treat each SMA separately for the purposes of applying the MTA.

SIFMA AMG argued that the application of the MTA at the SMA owner or legal entity level presented significant practical challenges for SMAs that trade uncleared swaps with a single SD. SIFMA AMG stated that each SMA is governed by an investment management agreement that grants asset managers authority over a portion of their client's assets. An SD may face the same legal entity as a counterparty through multiple SMAs administered by different asset managers. Each SMA that trades derivatives typically has its own payment netting set corresponding to each International Swaps and Derivatives Association (''ISDA'') master agreement and credit support annex (''CSA'') used by an asset manager.[16] Because the SMAs exist independently from each other, with their assets held, transferred, and returned separately at the account level, SIFMA AMG asserted that it is impractical for asset managers to collectively calculate the MTA across the SMAs of a single owner and to move collateral, in the aggregate, across the accounts.

C. DSIO No-Action Letter No. 19–25 Concerning the Application of Separate MTAs for IM and VM

In December 2019, DSIO staff issued an additional no-action letter concerning the application of the MTA in response to a request for relief from ISDA on behalf of its member SDs.[17] DSIO stated that based on ISDA's representations, it would not recommend enforcement action against an SD or MSP that does not combine IM and VM amounts for the purposes of Regulations 23.152(b)(3) and 23.153(c). More specifically, the no-action position covers SDs or MSPs that apply separate MTAs for IM and VM obligations on uncleared swap transactions with each swap counterparty, provided that the combined MTA for IM and VM with respect to that counterparty does not exceed $500,000.

In its request for no-action relief, ISDA stated that separate MTAs for IM and VM better reflect the operational requirements and the legal structure of the Commission's regulations, noting that the CFTC Margin Rule requires IM to be segregated with an unaffiliated third party, while not imposing similar segregation requirements with respect to VM. ISDA asserted that, as a result, distinct workflows have been established for the settlement of IM through custodians and tri-party agents that are completely separate from the settlement process for VM.

D. Market Participant Feedback and Proposal

Swap market participants, including a subcommittee established by the CFTC's Global Markets Advisory Committee (''GMAC Subcommittee''), expressed support for the adoption of regulations consistent with the no-action letters, noting that Letter 19–25, in particular, is time-limited and, more generally, the codification of no-action positions can be beneficial in that it can provide certainty to market participants with respect to the application of the Commission's regulations.[18]

Consistent with this feedback, the Commission has expressed the view that adopting regulations in accordance with the terms of no-action letters, where feasible, can facilitate efforts by market participants to take the operation of the Commission's regulations into account in planning their uncleared swap activities. Accordingly, based on its experience implementing the CFTC Margin Rule and the administration of Letters 17–12 and 19–25, the Commission decided to issue a notice of proposed rulemaking (''Proposal'') to amend the CFTC Margin Rule consistent with the staff positions set forth in those no-action letters, and to request comments on the Proposal.[19]

II. Final Rule

The Commission received six comment letters, all of which expressed support for the Proposal.[20] Commenters

[12] *See* 17 CFR 23.152(b)(3); 17 CFR 23.153(c).

[13] Pursuant to a Commission plan of reorganization, DSIO was renamed Market Participants Division (''MPD'') effective November 8, 2020.

[14] CFTC Letter No. 17–12, Regulations 23.152(b)(3) and 23.153(c): No-Action Position for Minimum Transfer Amount with respect to Separately Managed Accounts (Feb. 13, 2017) (''Letter 17–12''), *https://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-12.pdf.*

[15] *Id.*

[16] The ISDA master agreement is a standard contract published by ISDA commonly used in over-the-counter derivatives transactions that governs the rights and obligations of parties to a derivatives transaction. A CSA sets forth the terms of the collateral arrangement for the derivatives transaction.

[17] CFTC Letter No. 19–25, Regulations 23.151, 23.152, and 23.153—Staff Time-Limited No-Action Position Regarding Application of Minimum Transfer Amount under the Uncleared Margin Rules (Dec. 6, 2019) (''Letter 19–25''), *https://www.cftc.gov/csl/19-25/download.*

[18] *See Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps,* Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps (May 2020), *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download* (''GMAC Subcommittee Report'' or ''Report''). The Global Markets Advisory Committee (''GMAC'') established the GMAC Subcommittee to consider issues raised by the implementation of margin requirements for non-cleared swaps, to identify challenges associated with forthcoming implementation phases, and to make recommendations through a report. The GMAC Subcommittee issued the GMAC Subcommittee Report recommending various actions, including the codification of Letters 17–12 and 19–25. The GMAC adopted the Report and recommended to the Commission that it consider adopting the Report's recommendations.

[19] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 59470 (Sept. 22, 2020).

[20] Comments were submitted by the following entities: American Council of Life Insurers (''ACLI''); Futures Industry Association (''FIA''); Investment Company Institute (''ICI''); ISDA, Global Foreign Exchange Division (''GFXD'') of the Global Financial Markets Association (''GFMA''), and Securities Industry and Financial Markets Association (''SIFMA'') in a joint letter (''ISDA/GFMA/SIFMA''); Managed Funds Association (''MFA''); and SIFMA AMG. The comment letters are available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=4155.*

generally noted that the proposed amendments represent practical solutions that ease the operational burden of compliance with the CFTC Margin Rule without materially increasing systemic risk. Two commenters also noted that while consistent approaches to derivatives regulation are desirable, the Commission should adopt the proposed amendments even if the prudential regulators do not adopt similar changes.[21] Several commenters highlighted the importance of the regulatory certainty that the adoption of regulations consistent with existing no-action relief would bring.[22]

The comments confirm the rationale articulated for the Proposal. As such, the Commission is adopting the amendments to Regulations 23.151, 23.152(b)(3), 23.153(c) and 23.158(a), as proposed.

A. Application of MTA to SMAs

The Commission is adopting the proposed amendment to the definition of MTA in Regulation 23.151 to allow a CSE to apply an MTA of up to $50,000 to each SMA owned by a counterparty with whom the CSE enters into uncleared swaps. The amendment is consistent with the terms of Letter 17–12, which provides that DSIO would not recommend enforcement action if an SD applies an MTA no greater than $50,000 to each SMA of a legal entity, subject to certain conditions.

As discussed in the Proposal, when the Commission adopted the CFTC Margin Rule, it rejected the notion that SMAs of a legal entity should be treated separately from each other in applying certain aspects of the margin requirements for uncleared swaps.[23] However, after implementing the margin requirements for several years, and in particular, administering the application of the MTA, including the staff's issuance of Letter 17–12, the Commission believes that separately treating SMAs, at least with respect to the application of the MTA, is appropriate from an operational perspective.

The Commission notes, as discussed in the Proposal, that certain owners of SMAs, such as pension funds, in administering investments for beneficiaries, may engage in collateral management exercises and may have the capability to aggregate collateral across their SMAs. As such, a beneficial owner may be able to aggregate the MTA across its SMAs that trade with a particular CSE and centralize the management of collateral for the SMAs, which may result in increased netting among the SMAs and the CSE, and more efficient collateral management. However, the Commission points out that other SMA owners may not have such capability because, as noted in the GMAC Subcommittee Report, the SMA owners may not be able to coordinate trading activity across their SMAs, given that they typically grant full investment discretion to their asset managers and do not employ a centralized collateral manager in-house.[24]

In theory, while asset managers could coordinate with each other the calculation of the MTA across SMAs under their management, the Commission believes that accepted market practice may preclude the sharing of information among asset managers. In this regard, the Commission notes that the GMAC Subcommittee Report stated that owners of SMAs typically prohibit information sharing among their SMAs and require asset managers to keep trading information confidential, with the result that asset managers lack transparency and control over the assets of the SMA owner other than the specific assets under their management.

The Commission requested comment on the feasibility of coordination among asset managers. Several commenters, consistent with the GMAC Subcommittee Report's findings, indicated that confidentiality requirements and logistical impediments prevent asset managers from aggregating IM and VM obligations across SMAs for purposes of determining whether the MTA threshold has been exceeded, rendering the application of a single MTA across SMAs impractical.[25] Commenters further asserted that the ability to apply a separate MTA to each SMA is critical for asset managers that provide services to clients through an SMA structure.[26]

Likewise, the Commission believes that confidentiality requirements may also preclude communications between a CSE and individual asset managers of SMAs of an owner concerning the owner's overall trading activity. As discussed in the GMAC Subcommittee Report, a duty of confidentiality to the legal entity may prevent a CSE from sharing information across the asset managers of SMAs of a legal entity.[27] As a result, even though each SMA of an owner may contribute to reaching the MTA limit, asset managers for the SMAs may only know the amounts of IM and VM being contributed by SMAs under their management.

In light of the practical challenges that the calculation of the MTA across SMAs poses, as described above, the Commission is amending Regulation 23.151 to allow CSEs to apply an MTA of up to $50,000 for each SMA of a counterparty. The Commission notes, however, that under this application of the MTA to SMAs, as adopted, an MTA of up to $50,000 could be applied to an indefinite number of SMAs. This application of the MTA would effectively replace the aggregate limit of $500,000 for a particular counterparty's uncollateralized risk for uncleared swaps with an individual limit of $50,000 for each SMA of such counterparty. In turn, the counterparty could have an aggregate amount of uncollateralized risk in excess of $500,000.

This application of the MTA to SMAs could incentivize owners of SMAs to create separate accounts by formulating trading strategies to reduce or avoid margin transfers. However, the Commission believes that the inability to net collateral across separate accounts would stem the indiscriminate creation of SMAs[28] because the MTA for SMAs, as adopted in this Final Rule, is set at a low level (*i.e.,* $50,000), and any potential benefits resulting from the avoidance of margin transfers would become less meaningful, as the fragmentation of an owner's investments among SMAs would reduce the ability to aggregate swaps positions and net collateral.

Several commenters agreed with the Commission's view that the potential

[21] *See* ACLI at 1; FIA at 4.

[22] *See* ISDA/GFMA/SIFMA at 2; SIFMA AMG at 4.

[23] *See* 81 FR at 653 (rejecting commenters' request to extend to each separate account of a fund or plan its own initial margin threshold, while acknowledging that separate managers acting for the same fund or plan may not take steps to inform the fund or plan of their uncleared swap exposures on behalf of their principal on a frequent basis).

[24] GMAC Subcommittee Report at 16.

[25] *See* ICI at 6; ISDA/GFMA/SIFMA at 2; SIFMA AMG at 3. *See also* MFA at 3 (noting that the amendment to the MTA definition would eliminate the significant burden of requiring multiple asset managers running SMAs for the same SMA owner to coordinate the calculation of the MTA among them).

[26] *See, e.g.,* ICI at 6.

[27] The Commission notes that Regulation 23.410(c)(1)(i) prohibits disclosure by an SD or MSP, including a CSE, of confidential information provided by or on behalf of a counterparty to the SD or MSP. Nevertheless, Regulation 23.410(c)(2) provides that the SD or MSP may disclose the counterparty's confidential information if the disclosure is authorized in writing by the counterparty.

[28] As further discussed below, the application of the MTA, as provided in this Final Rule, is only available for separate accounts of an owner that, consistent with the definition of SMA, as adopted by the Final Rule, are not subject to collateral agreements that provide for netting across separate accounts.

risk of an increase in the amount of uncollateralized margin is mitigated by, among other safeguards, the low MTA thresholds and the limitations on netting across separate accounts.[29] The commenters further noted that the costs and practical challenges associated with establishing and maintaining SMAs are significant and would likely override the benefit of a marginal MTA increase.[30] One commenter also argued that it is extremely unlikely that an asset manager could coordinate its activities with other SMA managers to minimize the SMA owner's margin requirements, given that asset managers typically exercise discretion over a portion of the SMA's assets and maintain confidentiality with respect to the SMA's trading activity.[31] Another commenter pointed out that the requirement that the SMAs' asset managers must be granted authority over assets under their management under the investment management agreement [32] creates practical as well as cost challenges that would further disincentivize the creation of unnecessary SMAs.[33]

The Commission further notes that there are other provisions in the CEA and the Commission's regulations that would mitigate the increase in uncollateralized credit risk resulting from the absence of an aggregate limit in the MTA. Specifically, section 4s(j)(2) of the CEA requires CSEs to adopt a robust and professional risk management system adequate for the management of their swap activities,[34] and Regulation 23.600 [35] mandates that CSEs establish a risk management program to monitor and manage risks associated with their swap activities that includes, among other things, a description of risk tolerance limits.

The Commission is also amending Regulation 23.151 to add a definition for the term SMA. The new definition of SMA uses the definition of the term set forth in Letter 17–12. As adopted, the term SMA is defined as an account of a counterparty to a CSE that is managed by an asset manager pursuant to a specific grant of authority to such asset manager under an investment management agreement between the counterparty and the asset manager, with respect to a specified portion of the counterparty's assets.[36] The definition requires that the swaps of the SMA (i) be entered into between the counterparty and the CSE by the asset manager pursuant to authority granted by the counterparty to the asset manager through an investment management agreement; and (ii) be subject to a master netting agreement that does not provide for the netting of IM or VM obligations across all SMAs of the counterparty that have swaps outstanding with the CSE.

The definition of SMA is designed to limit the application of the MTA, as prescribed by the Final Rule, to SMAs that have dedicated netting sets under the SMAs' ISDA master agreements and CSAs, or are otherwise precluded from netting collateral across SMAs, and that are administered by asset managers with authority that is limited to assets specifically under their management. The Commission notes that the limited authority of asset managers over the assets of a legal entity and the practical inability to net collateral payments across SMAs pose obstacles in the calculation and aggregation of the MTA across SMAs that this Final Rule is designed to address.

B. Application of Separate MTAs for IM and VM

The Commission is revising the margin documentation requirements outlined in Regulation 23.158(a), consistent with Letter 19–25, to recognize that a CSE can apply separate MTAs for IM and VM with each counterparty in determining whether IM or VM or both must be posted or collected with a counterparty under Regulation 23.152 (requiring CSEs to exchange IM with a counterparty) or Regulation 23.153 (requiring CSEs to exchange VM with a counterparty). Regulation 23.158(a), as amended, states that if a CSE and its counterparty agree to have separate MTAs for IM and VM, the MTAs corresponding to IM and VM must be specified in the margin documentation required by Regulation 23.158, and the MTAs, on a combined basis, must not exceed the MTA specified in Regulation 23.151.

The Commission believes that the amendment to Regulation 23.158(a) accommodates a widespread market practice that facilitates the implementation of the CFTC margin requirements. In administering the application of the MTA, including the issuance of Letter 19–25, the Commission has recognized that, as a practical matter, CSEs and their counterparties maintain separate settlement workflows for IM and VM and agree to separate MTAs in each of their IM and VM CSAs, which, combined, do not exceed $500,000. These separate settlement workflows for IM and VM reflect, from an operational perspective, the different segregation requirements applicable to IM and VM under the CFTC Margin Rule.[37]

The Commission acknowledges that the amendment to Regulation 23.158(a) may result in the exchange of less margin than the amount that would be exchanged if the MTA were computed on an aggregate basis.[38] However, the Commission notes that because the total amount of combined IM and VM that would not be exchanged would generally not exceed $500,000, the differences in the total margin exchanged would not be material and would not result in an unacceptable level of credit risk. While the MTA as applied to SMAs, pursuant to the amendments to Regulation 23.151, may result in an aggregate MTA that exceeds $500,000, the Commission nonetheless believes that the increased level of uncollateralized risk that might result from the application of the MTA to SMAs will be mitigated because the MTA levels applicable to SMAs are set at a very low level (*i.e.,* $50,000), which would reduce the incentive for SMA owners to create additional SMAs to avoid the transfer of margin given the inability to net collateral across SMAs, as provided by the Final Rule.

The Commission believes, consistent with the views expressed by DSIO staff in issuing Letter 19–25, that the application of separate MTAs for IM and VM, subject to certain conditions, will

[29] *See* ICI at 7; MFA at 3; SIFMA AMG at 4.

[30] *See* ICI at 7, MFA at 3.

[31] *See* ICI at 7.

[32] As further discussed below, the Final Rule defines the term SMA as an account managed by an asset manager pursuant to a specific grant of authority to such asset manager under an investment management agreement between the counterparty and the asset manager with respect to a specified portion of the counterparty's assets.

[33] *See* SIFMA AMG at 4.

[34] *See* 7 U.S.C. 6s(j).

[35] 17 CFR 23.600.

[36] The definition of the term SMA, as adopted, refers to the aggregate account of a counterparty managed by an asset manager under the investment management agreement, and not to fund or pool sleeves overseen by sub-advisers.

[37] *See* 17 CFR 23.157 (requiring IM to be segregated with an independent custodian. The CFTC Margin Rule does not impose similar segregation requirements with respect to VM).

[38] Letter 19–25 describes the application of separate MTAs for IM and VM with the following illustration: An SD and a counterparty agree to a $300,000 IM MTA and a $200,000 VM MTA. If the margin calculations set forth in Commission regulations 23.154 (for IM) and 23.155 (for VM) require the SD to post $400,000 of IM with the counterparty and $150,000 of VM with the counterparty, the SD will be required to post $400,000 of IM with the counterparty (assuming that the $50 million IM threshold amount, defined in Commission regulation 23.151, for the counterparty has been exceeded). The SD, however, will not be obligated to post any VM with the counterparty as the $150,000 requirement is less than the $200,000 MTA. By contrast, in the absence of relief, the SD would have been required to post $550,000 (the full amount of both IM and VM), given that the combined amount of IM and VM exceeds the MTA of $500,000.

reduce the cost and burdens associated with the transfer of small margin balances, without undermining the Commission's objective of requiring swap counterparties to protect themselves by mitigating their credit and market risks. The Commission further notes that similar applications of the MTA are permitted in certain foreign jurisdictions, including the European Union.[39] The amendment to Regulation 23.158(a) therefore promotes consistent regulatory standards across jurisdictions, in line with the statutory mandate set forth in the Dodd-Frank Act[40] and reduces the need for market participants to create and implement IM and VM settlement flows tailored to different jurisdictions.

A number of commenters confirmed the Commission's understanding that the application of separate MTAs for IM and VM facilitates compliance with the CFTC Margin Rule.[41] Commenters noted that if swap counterparties were required to apply a single combined MTA, they would need to implement significant changes to the documentation and operational processes.[42] In particular, ICI noted that in the absence of Letter 19–25 and this Final Rule, counterparties would have to reconcile two operational processes: Margin calculation protocols that account for a combined MTA and separate workflows that exist for IM and VM settlement in light of the Commission's segregation requirements, which differentiate treatment for IM and VM.[43]

Several commenters expressed support for extending the application of separate MTAs for IM and VM to SMAs for which an MTA of up to $50,000 would be applicable, noting that the stated rationale for proposing the revisions to Regulation 23.158(a) applies equally to SMAs and that allowing such application would establish a consistent regulatory approach to applying MTA thresholds.[44] In addition, noting some ambiguity, SIFMA AMG urged the Commission to confirm that the ability to apply separate MTAs for IM and VM would extend to SMAs.[45] In response, the Commission confirms that the amendments to Regulations 23.151 and 23.158(a), as adopted, permit a CSE to apply separate MTAs for IM and VM with each counterparty, or an SMA of a counterparty, provided the MTAs, on a combined basis, do not exceed the respective limits set by Regulation 23.151. The Commission notes that the text of the amendment to Regulation 23.158(a) refers to Regulation 23.151, which, as amended, defines MTA and provides for the application of an MTA of up to $50,000 for each SMA of a counterparty, thus allowing for the application of separate amounts of IM and VM to the MTA of an SMA, as provided in amended Regulation 23.151.

C. Conforming Changes

Consistent with the amendment to the definition of MTA in Regulation 23.151, the Commission is adopting conforming changes to Regulations 23.152(b)(3) and 23.153(c) by replacing ''$500,000'' with ''the minimum transfer amount, as the term is defined in 23.151.'' The changes replace the reference to $500,000 in current Regulations 23.152(b)(3) and 23.153(c), which effectively limits the MTA to $500,000, with a reference to the revised definition of MTA, which allows for the application of an MTA of up to $50,000 for each SMA.

III. Administrative Compliance

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities.[46] As discussed in the Proposal, the amendments being adopted herein only affect certain SDs and MSPs and their counterparties, which must be eligible contract participants (''ECPs'').[47] The Commission has previously established that SDs, MSPs and ECPs are not small entities for purposes of the RFA.[48] Therefore, the Commission believes that the Final Rule will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

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 economic impact on a substantial number of small entities.

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[49] 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. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. The Final Rule, as adopted, contains no requirements subject to the PRA.

B. Cost-Benefit Considerations

Section 15(a) of the CEA[50] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations.

The Commission is amending Regulation 23.151 consistent with Letter 17–12. The Commission is revising the definition of MTA in Regulation 23.151 to permit CSEs to apply an MTA of up to $50,000 for each SMA of a counterparty that enters into uncleared swaps with a CSE. The Commission also is amending Regulation 23.151 to add a definition for the term SMA (or separately managed account). The Commission is also revising Regulation 23.158(a) consistent with Letter 19–25 to state that if a CSE and its counterparty agree to have separate MTAs for IM and VM, the respective amounts of MTA must be reflected in the margin documentation required by Regulation 23.158(a). Finally, the Commission is adopting conforming

[39] *See* Commission Delegated Regulation (EU) 2016/2251 Supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council of July 4, 2012 on OTC Derivatives, Central Counterparties and Trade Repositories with Regard to Regulatory Technical Standards for Risk-Mitigation Techniques for OTC Derivative Contracts Not Cleared by a Central Counterparty (Oct. 4, 2016), Article 25(4), *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2251&from=EN.*

[40] *See* section 752 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), calling on the CFTC to consult and coordinate on the establishment of consistent international standards with respect to the regulation of swaps.

[41] *See* ACLI at 2; MFA at 4; SIFMA AMG at 4.

[42] *See e.g.,* ACLI at 2.

[43] *See* ICI at 8.

[44] *See* ICI at 9; MFA at 4.

[45] *See* SIFMA AMG at 4.

[46] 5 U.S.C. 601 *et seq.*

[47] Pursuant to section 2(e) of the CEA, 7 U.S.C. 2(e), each counterparty to an uncleared swap must be an ECP, as defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18).

[48] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' '''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596, 30701 (May 23, 2012).

[49] 44 U.S.C. 3501 *et seq.*

[50] 7 U.S.C. 19(a).

changes to Regulations 23.152(b)(3) and 23.153(c) to incorporate the change to the definition of MTA in Regulation 23.151.

The baseline for the Commission's consideration of the costs and benefits of this Final Rule is the CFTC Margin Rule. The Commission recognizes that to the extent market participants have relied on Letters 17–12 and 19–25, the actual costs and benefits of the amendments, as realized in the market, may not be as significant.

The Commission notes that 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 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 following discussion of costs and benefits refers to the effects of the Final Rule on all activity subject to the 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 section 2(i) of the CEA.[51]

As previously discussed, the Commission received six comment letters expressing support for the Proposal. Commenters generally noted that the proposed amendments are beneficial for market participants and characterized them as helpful and practical accommodations that reflect the realities of the marketplace and facilitate compliance with the CFTC Margin Rule. Several commenters elaborated on specific benefits of the amendments, noting for instance that the amendments would eliminate burdens associated with the application of a single MTA across SMAs of a counterparty, provide regulatory certainty and contribute to global consistency in regulatory standards. Some commenters also addressed concerns that the Commission had raised in the Proposal, pointing out mitigating factors.[52]

1. Benefits

The amendments to Regulation 23.151 allow CSEs to apply an MTA of up to $50,000 to SMAs of a counterparty. Under the current requirements, a CSE must apply the MTA with respect to each counterparty to an uncleared transaction. As a result, in the context of a counterparty that has multiple SMAs through which uncleared swaps are traded, with each SMA potentially giving rise to IM and VM obligations, the amounts of IM and VM attributable to the SMAs of the counterparty must be aggregated to determine whether the MTA has been exceeded, which would require the exchange of IM or VM.

As previously discussed, because the assets of SMAs are separately held, transferred, and returned at the account level, and CSEs and SMA asset managers do not share trading information across SMAs, aggregation of IM and VM obligations across SMAs for the purpose of determining whether the MTA has been exceeded may be impractical, hindering efforts to comply with the CFTC Margin Rule. The Commission acknowledges, however, the possibility that, in certain contexts, an owner of SMAs, such as a pension fund that administers investments for beneficiaries, may be set up to perform collateral management exercises and may have the capability to aggregate collateral across SMAs. Nevertheless, according to industry feedback, the only practical alternative to fully ensure compliance with the margin requirements is to set the MTA for each SMA at zero, so that trading by a given SMA does not result in an inadvertent breach of the aggregate MTA threshold without the exchange of the required margin.

The amendments to Regulation 23.151, by allowing the application of an MTA of up to $50,000 for each SMA of a counterparty, will ease the operational burdens and transactional costs associated with managing frequent transfers of small amounts of collateral that counterparties would incur if the MTA for SMAs were to be set at zero. In addition, the amendments give flexibility to CSEs, owners of SMAs, and asset managers to negotiate MTA levels within the regulatory limits that match the risks of the SMAs and their investment strategies, and the uncleared swaps being traded.

Furthermore, because the amendments to Regulation 23.151 simplify the application of the MTA in the SMA context, thereby reducing the operational burden, market participants may be encouraged to participate in the uncleared swap markets through managed accounts, and account managers may also make their services more readily available to clients. As a result, trading in the uncleared swap markets may increase, promoting competition and liquidity.

The amendment of Regulation 23.158(a) could likewise lead to efficiencies in the application of the MTA. The amendment, as adopted, states that if a CSE and its counterparty agree to have separate MTAs for IM and VM, the respective amounts of MTA must be reflected in the margin documentation required by Regulation 23.158(a). CSEs will thus be able to maintain separate margin settlement workflows for IM and VM to address the differing segregation treatments for IM and VM under the CFTC Margin Rule.

The Commission notes that the application of separate MTAs for IM and VM has been adopted in other jurisdictions, including the European Union, and the practice is widespread. The amendments, by aligning the CFTC with other jurisdictions with respect to the application of the MTA, advance the CFTC's goal of promoting consistent international standards, in line with the statutory mandate set forth in the Dodd-Frank Act.

Finally, the amendments, as adopted, provide certainty to market participants who may have relied on Letters 17–12 and 19–25, and could thereby facilitate their efforts to take the operation of the Commission's regulations into account in the planning of their uncleared swap activities.

2. Costs

The amendments to Regulation 23.151 could result in a CSE applying an MTA that exceeds, in the aggregate, the current MTA limit of $500,000. That is because the amendments, as adopted, permit the application of an MTA of up to $50,000 for each SMA of a counterparty, without limiting the number of SMAs to which the $50,000 threshold may be applied. The amendments thus could incentivize SMA owners to increase the number of separate accounts in order to benefit from the higher MTA limit. As a result, the collection and posting of margin for some SMAs may be delayed, since margin will not need to be exchanged until the MTA threshold is exceeded, which could result in the exchange of less collateral to mitigate the risk of uncleared swaps.

The amendment to Regulation 23.158(a), as adopted, states that if a CSE and its counterparty agree to have separate MTAs for IM and VM, the respective amounts of MTA must be reflected in the margin documentation

[51] 7 U.S.C. 2(i).

[52] *See e.g.,* ICI at 7 and MFA at 3 (addressing the concern that permitting the application of a reduced, individualized MTA, as proposed, to an indefinite number of SMAs may incentivize SMA owners to create additional separate accounts).

required by Regulation 23.158(a). The amendment recognizes that CSEs can apply separate MTAs for IM and VM for determining whether Regulations 23.152(b)(3) and 23.153(c) require the exchange of IM or VM. The Commission acknowledges that the application of separate IM and VM MTAs may result in the exchange of a lower amount of total margin between a CSE and its counterparty to mitigate the risk of their uncleared swaps than the amount that would be exchanged if the IM and VM MTA were computed on an aggregate basis.[53] The Commission notes that this cost may be mitigated because the application of separate IM and VM MTAs could also result in the exchange of higher rather than lower amounts of margin.[54]

While the Commission recognizes that the uncollateralized exposure that may result from amending Regulations 23.151 and 23.158(a), in line with Letters 17–12 and 19–25, could increase credit risk associated with uncleared swaps, the Commission believes that a number of safeguards exist to mitigate this risk. The Commission notes that the amendments, as adopted, set the MTA at low levels. When the MTA is applied to a counterparty, the sum of the IM and VM MTAs must not exceed $500,000. When the MTA is applied to an SMA of a counterparty, the sum of the IM and VM MTAs must not exceed $50,000. In particular with respect to the application of the MTA to SMAs, the low level of the MTA may dampen the incentive to create additional SMAs to benefit from the potentially higher MTA threshold given the inability to net collateral across SMAs under the Final Rule. Several commenters confirmed the Commission's assessment and some added that the burdens and costs of creating and maintaining separate accounts would likely override the benefits of any marginal increase in MTA.[55] Also, the Commission notes that other regulatory safeguards exist that would limit the potential increase in the credit exposure, including section 4s(j)(2) of the CEA,[56] which mandates that CSEs adopt a robust and professional risk management system adequate for the management of day-to-day swap activities, and Regulation 23.600,[57] which requires CSEs, in establishing a risk management program for the monitoring and management of risk related to their swap activities, to account for credit risk and to set risk tolerance limits.

3. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of the Final Rule pursuant to the five considerations identified in section 15(a) of the CEA as follows:

a. Protection of Market Participants and Public

As discussed above, the amendments to Regulations 23.151 and 23.158(a), which address the application of the MTA to SMAs and the application of separate MTAs for IM and VM, remove practical burdens in the application of the MTA, facilitating the implementation of the CFTC Margin Rule, with minimal impact on the protection of market participants and the public in general. Although the amendments, as adopted, could result in larger amounts of MTA being applied to uncleared swaps, potentially resulting in the exchange of reduced margin to offset the risk of uncleared swaps, the impact is likely to be negligible relative to the size of the uncleared swap positions. The Commission notes that the MTA thresholds are set at low levels. In addition, CSEs are required to monitor and manage risk associated with their swaps, in particular credit risk, and to set tolerance levels as part of the risk management program mandated by Regulation 23.600. To meet the risk tolerance levels, a CSE may contractually limit the MTA or the number of SMAs for a particular counterparty with whom the CSE enters into uncleared swap transactions.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

By amending Regulation 23.151 to allow CSEs to apply an MTA of up to $50,000 for each SMA of a counterparty, the Commission eliminates burdens and practical challenges associated with the computation and aggregation of the MTA across multiple SMAs. In addition, the new MTA threshold for SMAs could have the effect of delaying how soon margin would be exchanged, as the aggregate MTA for SMAs is no longer limited to $500,000.

The simplification of the process for applying the MTA to SMAs and the reduced cost that may be realized from the deferral of margin obligations may encourage market participants to enter into uncleared swaps through accounts managed by asset managers and also encourage asset managers to accept more clients. The amendments to Regulation 23.151 could therefore foster competitiveness by encouraging increased participation in the uncleared swap markets.

The amendment to Regulation 23.158(a) states that if a CSE and its counterparty agree to have separate MTAs for IM and VM, the respective amounts of MTA must be reflected in the margin documentation required by Regulation 23.158(a). The amendment recognizes that CSEs can apply separate MTAs for IM and VM, enabling CSEs to accommodate the different segregation treatments for IM and VM under the CFTC's margin requirements and to more efficiently comply with the CFTC Margin Rule.

The amendments to Regulations 23.151 and 23.158(a) could have the overall effect of permitting larger amounts of MTA being applied to uncleared swaps, resulting in the collection and posting of less collateral to offset the risk of uncleared swaps, which could undermine the integrity of the markets. The Commission, however, believes that the uncollateralized swap exposure will be limited given that the MTA thresholds are set at low levels, and there are other built-in regulatory safeguards, such as the requirement that CSEs establish a risk management program under Regulation 23.600 that provides for the implementation of internal risk parameters for the monitoring and management of swap risk.

The Commission also notes that the amendments provide certainty to market participants who may have relied on Letters 17–12 and 19–25, and thereby facilitate their efforts to take the operation of the Commission's regulations into account in planning their uncleared swap activities.

c. Price Discovery

The amendments to Regulations 23.151 and 23.158(a) simplify the process for applying the MTA, reducing the burden and cost of implementation. Given these cost savings, CSEs and

[53] *Supra* note 38 (explaining how the application of separate MTAs for IM and VM could result in the exchange of lower amounts of margin than if IM and VM MTA were computed on an aggregate basis).

[54] The following illustration explains how the application of separate MTAs for IM and VM could result in the exchange of higher amounts of margin than if IM and VM MTA were computed on an aggregate basis: An SD and a counterparty agree to $300,000 IM MTA, and $200,000 VM MTA. If the margin calculations set forth in Commission regulations 23.154 (for IM), and 23.155 (for VM) require the SD to post $200,000 of IM with the counterparty and $250,000 of VM with the counterparty, the SD would not be required to post IM with the counterparty as the $200,000 requirement is less than the $300,000 MTA. However, the SD would be required to post $250,000 in VM as the VM required exceeds the $200,000 VM MTA, even though the total amount of margin owed is below the $500,000 MTA set forth in Commission regulations 23.152(b)(3) and 23.153(c). Letter 19–25 at 4.

[55] *See* ICI at 7; MFA at 3; SIFMA AMG at 3.

[56] 7 U.S.C. 6s(j)(2).

[57] 17 CFR 23.600.

other market participants may be encouraged to increase their participation in the uncleared swap markets. As a result, trading in uncleared swaps may increase, leading to increased liquidity and enhanced price discovery.

d. Sound Risk Management

Because the amendments to Regulations 23.151 and 23.158(a) permit the application of larger amounts of MTA, less margin may be collected and posted to offset the risk of uncleared swaps. Nevertheless, the Commission believes that the risk is mitigated because the regulatory MTA thresholds are set at low levels, and CSEs are required to have a risk management program that provides for the implementation of internal risk management parameters for the monitoring and management of swap risk.

The Commission also notes that the amendments simplify the application of the MTA, reducing the burden and cost of implementation, without leading to an unacceptable level of uncollateralized credit risk. Such reduced burden and cost could encourage market participants to increase their participation in the uncleared swap markets, potentially facilitating improved risk management for counterparties using uncleared swaps to hedge risks. Moreover, by facilitating compliance with certain aspects of the Commission's regulations, the Commission allows market participants to focus their efforts on monitoring and ensuring compliance with other substantive aspects of the CFTC Margin Rule, thus promoting balanced and sound risk management.

e. Other Public Interest Considerations

The amendment to Regulation 23.158(a) addresses the application of separate MTAs for IM and VM, contributing to the CFTC's alignment with other jurisdictions, such as the European Union, which advances the CFTC's efforts to achieve consistent international standards. The CFTC's alignment with other jurisdictions with respect to the application of the MTA will benefit CSEs that are global market participants by eliminating the need to establish different settlement workflows tailored to each jurisdiction in which they operate.

C. Antitrust 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 objectives of the CEA, as well as the policies and purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under 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.[58]

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 Proposal implicated any other specific public interest to be protected by the antitrust laws and received no comments.

The Commission has considered the Final Rule to determine whether it is anticompetitive and has identified no anticompetitive effects. The Commission requested comment on whether the Proposal was anticompetitive and, if it was, what the anticompetitive effects were, and received no comments.

Because the Commission has determined that the Final Rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects 17 CFR Part 23

Swaps, Swap dealers, Major swap participants, Capital and margin requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 23 as set forth below:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1,6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

■ 2. Amend § 23.151 by:
■ a. Revising the definition of ''minimum transfer amount''; and
■ b. Adding in alphabetical order a definition for ''separately managed account''.

The revision and addition read as follows:

§ 23.151 Definitions applicable to margin requirements.

* * * * *

Minimum transfer amount means a combined initial and variation margin amount under which no actual transfer of funds is required. The minimum transfer amount shall be $500,000. Where a counterparty to a covered swap entity owns two or more separately managed accounts, a minimum transfer amount of up to $50,000 may be applied for each separately managed account.

* * * * *

Separately managed account means an account of a counterparty to a covered swap entity that meets the following requirements:

(1) The account is managed by an asset manager and governed by an investment management agreement, pursuant to which the counterparty grants the asset manager authority with respect to a specified amount of the counterparty's assets;

(2) Swaps are entered into between the counterparty and the covered swap entity by the asset manager on behalf of the account pursuant to authority granted by the counterparty through an investment management agreement; and

(3) The swaps of such account are subject to a master netting agreement that does not provide for the netting of initial or variation margin obligations across all such accounts of the counterparty that have swaps outstanding with the covered swap entity.

* * * * *

■ 3. Amend § 23.152 by revising paragraph (b)(3) to read as follows:

§ 23.152 Collection and posting of initial margin.

* * * * *

(b) * * *

(3) *Minimum transfer amount.* A covered swap entity is not required to collect or to post initial margin pursuant to §§ 23.150 through 23.161 with respect to a particular counterparty unless and until the combined amount of initial margin and variation margin that is required pursuant to §§ 23.150 through 23.161 to be collected or posted and that has not been collected or posted with respect to the counterparty is greater than the minimum transfer amount, as the term is defined in § 23.151.

* * * * *

■ 4. Amend § 23.153 by revising paragraph (c) to read as follows:

§ 23.153 Collection and posting of variation margin.

* * * * *

(c) *Minimum transfer amount.* A covered swap entity is not required to collect or to post variation margin pursuant to §§ 23.150 through 23.161 with respect to a particular counterparty unless and until the combined amount of initial margin and variation margin

[58] 7 U.S.C. 19(b).

that is required pursuant to §§ 23.150 through 23.161 to be collected or posted and that has not been collected or posted with respect to the counterparty is greater than the minimum transfer amount, as the term is defined in § 23.151.

* * * * *

■ 5. Amend § 23.158 by revising paragraph (a) to read as follows:

§ 23.158 Margin documentation.

(a) *General requirement.* Each covered swap entity shall execute documentation with each counterparty that complies with the requirements of § 23.504 and that complies with this section, as applicable. For uncleared swaps between a covered swap entity and a counterparty that is a swap entity or a financial end user, the documentation shall provide the covered swap entity with the contractual right and obligation to exchange initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by §§ 23.150 through 23.161. With respect to the minimum transfer amount, if a covered swap entity and a counterparty that is a swap entity or a financial end user agree to have separate minimum transfer amounts for initial and variation margin, the documentation shall specify the amounts to be allocated for initial margin and variation margin. Such amounts, on a combined basis, must not exceed the minimum transfer amount, as the term is defined in § 23.151.

* * * * *

Issued in Washington, DC, on December 9, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—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—Supporting Statement of Commissioner Dawn D. Stump

Overview

I am pleased to support the final rulemaking that the Commission is adopting with respect to the ''minimum transfer amount'' provisions of its margin requirements for uncleared swaps.

This rulemaking addresses recommendations that the Commission has received from its Global Markets Advisory Committee (''GMAC''), which I am proud to sponsor, and is based on a comprehensive report prepared by GMAC's Subcommittee on Margin Requirements for Non-Cleared Swaps (''GMAC Margin Subcommittee'').[59] It demonstrates the value added to the Commission's policymaking by its Advisory Committees, in which market participants and other interested parties come together to provide us with their perspectives and potential solutions to practical problems.

The rulemaking we are adopting makes two changes to the Commission's uncleared margin rules, which have much to commend them—indeed, we did not receive any comment letters opposing them. These rule changes further objectives that I have commented on before:

- The need to tailor our rules to assure that they are workable for those required to comply with them; and
- the benefits of codifying relief that has been issued by our Staff and re-visiting our rules, where appropriate.

A Different Universe Is Coming Into Scope of the Uncleared Margin Rules

The Commission's uncleared margin rules for swap dealers, like the Framework of the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions (''BCBS/IOSCO'')[60] on which they are based, were designed primarily to ensure the exchange of margin between the largest, most systemic, and interconnected financial institutions for their uncleared swap transactions with one another. Today, these institutions and transactions are subject to uncleared margin requirements that have taken effect since the rules were adopted.

Pursuant to the phased implementation schedule of the Commission's rules and the BCBS/IOSCO Framework, though, a different universe of market participants—presenting unique considerations—will soon be coming into scope of the margin rules. It is only now, as we enter the final phases of the implementation schedule, that the Commission's uncleared margin rules will apply to a significant number of financial end-users, and we have a responsibility to make sure they are fit for that purpose. Accordingly, now is the time we must thoughtfully consider whether the regulatory parameters that we have designed for the largest financial institutions in the earlier phases of margin implementation need to be tailored to account for the practical and operational challenges posed by the exchange of margin when one of the counterparties is a pension plan, endowment, insurance provider, mortgage service provider, or other financial end-user.

This rulemaking regarding the minimum transfer amount (''MTA'') does exactly that. The Commission's uncleared margin rules provide that a swap dealer is not required to collect or post initial margin (''IM'') or variation margin (''VM'') with a counterparty until the combined amount of such IM and VM exceeds the MTA of $500,000. Yet, the application of the MTA presents a significant operational challenge for institutional investors that typically hire asset managers to exercise investment discretion over portions of their assets in separately managed accounts (''SMAs'') for purposes of diversification. As a practical matter, neither the owner of the SMA, the manager of the assets in the SMA, nor the swap dealer that is a counterparty to the SMA is in a position to readily determine when the MTA has been exceeded on an aggregate basis (or to assure that it is not).

To address this challenge, the Commission is amending the definition of MTA in its margin rules to allow a swap dealer to apply an MTA of up to $50,000 to each SMA owned by a counterparty with which the swap dealer enters into uncleared swaps. As noted in the release, any potential increase in uncollateralized credit risk as a result would be mitigated both by the conditions set out in the rules we are adopting, as well as existing safeguards in the Commodity Exchange Act (''CEA'') and the Commission's regulations.[61]

This is a sensible approach and an appropriate refinement to make the Commission's uncleared margin rules workable for SMAs given the realities of the modern investment management environment. As I have stated before, no matter how well-intentioned a rule may be, if it is not workable, it cannot deliver on its intended purpose.[62]

The Benefits of Codifying Staff Relief and Re-Visiting Our Rules

Application of MTA to SMAs: The rule change that I have discussed above regarding the application of the MTA to SMAs would codify no-action relief in Letter No. 17–12 that our Staff issued in 2017.[63] The Commission's Staff often has occasion to issue relief or take other action in the form

[59] *Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps,* Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps (April 2020), available at *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.*

[60] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (July 2019), available *at https://www.bis.org/bcbs/publ/d475.pdf.*

[61] Specifically, CEA Section 4s(j)(2), 7 U.S.C. 6s(j)(2), requires swap dealers to adopt a robust risk management system adequate for the management of their swap activities, and CFTC Rule 23.600, 17 CFR 23.600, requires swap dealers to establish a risk management program to monitor and manage risks associated with their swap activities.

[62] Statement of Commissioner Dawn D. Stump Regarding Final Rule: Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants (July 23, 2020), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement072320.*

[63] CFTC Letter No. 17–12, Commission Regulations 23.152(b)(3) and 23.153(c): No-Action Position for Minimum Transfer Amount with respect to Separately Managed Accounts (February 13, 2017), available at *https://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-12.pdf.*

of no-action letters, interpretative letters, or advisories on various issues and in various circumstances. This affords the Commission a chance to observe how the Staff action operates in real-time, and to evaluate lessons learned. With the benefit of this time and experience, the Commission should then consider whether codifying such Staff action into rules is appropriate.[64]

As I have said before, ''[i]t is simply good government to re-visit our rules and assess whether certain rules need to be updated, evaluate whether rules are achieving their objectives, and identify rules that are falling short and should be withdrawn or improved.'' [65] Experience with the Staff no-action relief in Letter No. 17–12 supports our rule change to tailor the application of the MTA under the Commission's uncleared margin rules in the SMA context.

Separate MTAs for IM and VM: The second rule change regarding the MTA that we are adopting similarly would codify existing Staff no-action relief in recognition of market realities. Consistent with Staff no-action Letter No. 19–25,[66] it would recognize that a swap dealer may apply separate MTAs for IM and VM with each counterparty, provided that the MTAs corresponding to IM and VM are specified in the margin documentation required under the Commission's regulations, and that the MTAs, on a combined basis, do not exceed the prescribed MTA.

Staff's no-action relief, and the Commission's rule amendments to codify that relief, take into account the separate settlement workflows that swap counterparties maintain to reflect, from an operational perspective, the different regulatory treatment of IM and VM.[67] And given that the total amount of combined IM and VM exchanged would not exceed the prescribed MTA, separate MTAs for IM and VM would not materially increase the amount of credit risk at a given time. Under Letter No. 19–25 and this codification, swap dealers and their counterparties can manage MTA in an operationally practicable way that aligns with the market standard.

There Remains Unfinished Business

While I am pleased with the steps the Commission is taking, there remains unfinished business in the implementation of uncleared margin requirements. The report of the GMAC Margin Subcommittee recommended several actions, beyond those that we are adopting, to address the hurdles associated with the application of uncleared margin requirements to end-users. Having been present for the development of the Dodd-Frank Act, I recall that the concerns expressed by many lawmakers at the time focused on the application of the new requirements to end-users. The unique challenges with respect to uncleared margin that caused uneasiness back in 2009–2010 are now much more immediate as the margin requirements are being phased in to apply to these end-users. As the calendar turns into the new year, I look forward to continuing to work together to address the other recommendations included in the GMAC Margin Subcommittee's report regarding applying the uncleared margin rules to financial end-users. The need to do so will only become more urgent as time marches on.

Conclusion

To be clear, these changes to the uncleared margin rules are not a ''roll-back'' of the margin requirements that apply today to the largest financial institutions in their swap transactions with one another. Rather, they reflect a thoughtful refinement of our rules to take account of specific circumstances in which the rules impose substantial practical and operational challenges (*i.e.,* they are not workable) when applied to financial end-users that are now coming within the scope of their mandates.

I am very appreciative of the many people whose efforts have contributed to bringing this rulemaking to fruition. First, the members of the GMAC, and especially the GMAC Margin Subcommittee, who devoted a tremendous amount of time to provide us with a high-quality report on complex margin issues during the turmoil at the start of the pandemic. Second, Chairman Tarbert and my fellow Commissioners for working with me on these important issues. And finally, the Staff of the Market Participants Division, whose tireless efforts have enabled us to advance these initiatives to assure that our uncleared margin rules are workable for all, thereby enhancing compliance consistent with our oversight responsibilities under the CEA.

Appendix 3—Statement of Commissioner Dan M. Berkovitz

I. Introduction

I support today's two final rules that make tailored amendments to the CFTC's Margin Rule.[1] The Margin Rule requires swap dealers (''SDs'') and major swap participants (''MSPs'') for which there is no prudential regulator to post and collect, each business day, initial and variation margin for uncleared swap transactions with each counterparty that is an SD, MSP, or a financial end user with material swaps exposure (''MSE'').[2] The Margin Rule is a lynchpin of the Dodd-Frank reforms for swaps markets, and critical to mitigating risks in the financial system that might otherwise arise from uncleared swaps.[3] I support the final rules because they provide targeted, operational improvements to the Margin Rule; include backstops to deter any potential abuse; and are unlikely to increase risk to the U.S. financial system.

The two final rules address: (1) The definition of MSE and an alternative method for calculating initial margin (''MSE and Initial Margin Final Rule''); and (2) the application of the minimum transfer amount (''MTA'') for initial and variation margin (''MTA Final Rule''). The final rules align Commission requirements with international frameworks developed by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions (''BCBS/IOSCO''),[4] and incorporate recommendations made to the CFTC's Global Markets Advisory Committee.[5] The final rules also build off existing CFTC staff no-action letters that in some cases have been in place since 2017, and that have operated with no apparent detrimental effects.

II. MSE and Initial Margin Final Rule

The MSE and Initial Margin Final Rule amends the definition of MSE to align it with the BCBS/IOSCO framework, including the method for calculating the average daily aggregate notional amount (''AANA'') of swaps. The final rule provides for calculations based on the average of the last business day in each month of a three-month period. The Commission previously raised concerns that this method of AANA calculation could potentially become less representative of an entity's true AANA and swaps exposure, potentially through the use of ''window dressing'' to artificially reduce AANA during the measurement period.[6]

The MSE and Initial Margin Final Rule includes an important new provision to

[64] *See* comments of Commissioner Dawn D. Stump during Open Commission Meeting on January 30, 2020, at 183 (noting that after several years of no-action relief regarding trading on swap execution facilities (''SEFs''), ''we have the benefit of time and experience and it is time to think about codifying some of that relief. . . . [T]he SEFs, the market participants, and the Commission have benefited from this time and we have an obligation to provide more legal certainty through codifying these provisions into rules.''), available at *https://www.cftc.gov/sites/default/files/2020/08/1597339661/openmeeting_013020_Transcript.pdf.*

[65] Statement of Commissioner Dawn D. Stump for CFTC Open Meeting on: (1) Final Rule on Position Limits and Position Accountability for Security Futures Products; and (2) Proposed Rule on Public Rulemaking Procedures (Part 13 Amendments) (September 16, 2019), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement091619.*

[66] CFTC Letter No. 19–25, Commission Regulations 23.151, 23.152, and 23.153—Staff Time-Limited No-Action Position Regarding Application of Minimum Transfer Amount under the Uncleared Margin Rules (December 6, 2019), available at *https://www.cftc.gov/csl/19-25/download.*

[67] Under the Commission's uncleared margin rules, IM posted or collected by a swap dealer must be held by one or more custodians that are not affiliated with the swap dealer or the counterparty, whereas VM posted or collected by a swap dealer is not required to be segregated with an independent custodian. *See* 17 CFR 23.157.

[1] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) (''Margin Rule'').

[2] Although addressed in the final rules, there are currently no registered MSPs.

[3] Section 4s(e) of the Commodity Exchange Act (''CEA''), as amended by the Dodd-Frank Act, requires the Commission to adopt rules for minimum initial and variation margin for uncleared swaps entered into by SDs and MSPs for which there is no prudential regulator.

[4] BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (July 2019), available at *https://www.bis.org/bcbs/publ/d475.pdf.* The BCBS/IOSCO framework was originally promulgated in 2013 and later revised in 2015.

[5] Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps, Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps (Apr. 2020), available at *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.*

[6] *See* Margin Rule, 81 FR at 645.

address this issue. The final rule explicitly prohibits any ''[a]ctivities not carried out in the regular course of business and willfully designed to circumvent calculation at month-end to evade meeting the definition of material swaps exposure . . . .'' [7] The addition of this language to the final rule's regulatory text will help ensure that CFTC efforts at international harmonization will not come at the expense of the safety and soundness of the U.S. financial system.[8] I thank the Chairman and the CFTC staff for working with my office to include this provision.

The MSE and Initial Margin Final Rule will also allow SDs and MSPs for which there is no prudential regulator (''Covered Swap Entities'' or ''CSEs'') to rely on the initial margin calculations of the more sophisticated counterparties with whom they transact swaps to manage their risks. This flexibility is limited to circumstances where a CSE enters into uncleared swaps with an SD, MSP, or swap entity to hedge its customer-facing swaps. This amendment to the Commission's existing rules could help promote liquidity and competition in swaps markets by increasing choice for end-users that are CSE customers.

The MSE and Initial Margin Final Rule provides helpful direction regarding the scope of hedging swaps for purposes of relying on a CSE counterparty's initial margin calculations. As set forth in the preamble to the final rule, a hedging swap must be consistent (although not identical) with the statutory definition of ''bona fide hedging transaction or position'' in CEA section 4a(c)(2)(B).[9] The final rule also makes clear that existing Commission regulations require a CSE that relies on its counterparty's initial margin calculations to also take steps to ''monitor, identify, and address potential shortfalls in the amounts of [initial margin] generated by the counterparty on whose [initial margin] model the CSE is relying.'' [10]

III. MTA Final Rule

To reduce operational burdens associated with de minimis margin transfers, the Margin Rule provides that a CSE is not required to collect or post margin until the combined amount of initial margin and variation margin that is required to be collected or posted and that has not been collected or posted with respect to the counterparty exceeds $500,000—the MTA.[11] This MTA level, in part, helps limit the amount of a counterparty's uncollateralized, uncleared swaps exposure and mitigate any systemic risk arising from such swaps.

The MTA Final Rule addresses the application of the $500,000 MTA level to a counterparty's ''separately managed accounts,'' as well as the use of separate MTAs for initial and variation margin.[12] The MTA Final Rule codifies separate treatment for separately managed accounts and permits an MTA of $50,000 for each such account of a counterparty. This approach responds to practical limits on the ability of asset managers, for example, to aggregate initial and variation margin obligations across multiple separately managed accounts owned by the same counterparty. The MTA Final Rule also provides that if certain entities agree to separate MTAs for initial margin and variation margin, the respective amounts of MTA must be reflected in their required margin documentation.

These new provisions balance concerns over operational inefficiencies and practical challenges in the Commission's MTA rules against concerns that they may result in the exchange of less total margin than would be the case under the Commission's current requirements. Comments in response to the proposed rule noted the difficulties that would be associated with creating numerous separately managed accounts solely to evade the comparatively low $50,000 MTA for separately managed accounts. The MTA Final Rule also defines separately managed account so that the swaps of such account are not subject to a netting of initial or variation margin obligations. This potentially provides further disincentive to create separately managed accounts solely for the purpose of evading the $50,000 MTA level for such accounts.

IV. Conclusion

Mitigating systemic risk to the U.S. financial system was a primary objective of the Dodd-Frank Act in 2010, and of subsequent Commission rulemakings to implement Dodd-Frank, including the Margin Rule adopted in 2016. The Commission must remain committed to the Margin Rule and vigilant for any large pool of uncollateralized, uncleared swaps exposure. Today's targeted final rules, which codify existing practices, include embedded backstops, and provide tailored operational enhancements to the Margin Rule, are unlikely to present systemic risks.

I thank staff of the Market Participants Division for their work on these final rules.

[FR Doc. 2020–27508 Filed 1–22–21; 8:45 am]

BILLING CODE 6351–01–P

[7] MSE and Initial Margin Final Rule at new § 23.151 (defining ''Material Swaps Exposure'').

[8] The preamble to the MSE and Initial Margin Final Rule also notes an analysis by the CFTC's Office of the Chief Economist indicating that the new month-end AANA calculation method captures substantially the same entities and total number of entities as the Commission's previous daily AANA calculation method. As with any rulemaking, the Commission is free in the future to periodically review its data and confirm that the new AANA calculation method is performing as expected.

[9] 7 U.S.C. 6a(c)(2).

[10] MSE and Initial Margin Final Rule at section II(B).

[11] 17 CFR 23.151.

[12] Both aspects of the MTA Final Rule were the subject of CFTC staff no-action letters issued in 2017 and 2019, respectively.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200221–0062; RTID 0648–XA805]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the A season allowance of the 2021 total allowable catch (TAC) of Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 20, 2021, through 1200 hrs, A.l.t., June 10, 2021. Comments must be received at the following address no later than 4:30 p.m., A.l.t., February 3, 2021.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2019–0102 by any of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0102,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter

''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2021 Pacific cod TAC apportioned to catcher vessels using trawl gear in the Western Regulatory Area of the GOA is 1,701 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the GOA (85 FR 13802, March 10, 2020) and inseason adjustment (85 FR 83834, December 23, 2020).

NMFS closed directed fishing for Pacific cod TAC apportioned to catcher vessels using trawl gear in the Western Regulatory Area of the GOA under § 679.20(d)(1)(iii) on January 20, 2021 (85 FR 13802, March 10, 2020).

As of January 20, 2021, NMFS has determined that approximately 1,701 metric tons (mt) remain of the Pacific cod TAC apportioned to catcher vessels using trawl gear in the Western Regulatory Area of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2021 TAC of Pacific apportioned to catcher vessels using trawl gear in the Western Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod apportioned to catcher vessels using trawl gear in the Western Regulatory Area of the GOA, effective 1200 hours, A.l.t., January 20, 2021.

The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The catch of Pacific cod apportioned to catcher vessels using trawl gear in the Western Regulatory Area of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 14, 2021.

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

Dated: January 15, 2021.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–01434 Filed 1–19–21; 4:15 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 86, No. 14

Monday, January 25, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 19, 2021.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: 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 these information collections are best assured of having their full effect if received by February 24, 2021. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Laboratory Approval Programs.

OMB Control Number: 0581–0320.

Summary of Collection: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to receive approval from the Office of Management and Budget (OMB) to collect information for the Micro-Grants for Food Security Program (MGFSP) under its Grants Division. Due to the passing of the Agriculture Improvement Act of 2018 (Pub. L. 115–343) (Farm Bill), AMS Grants Division is implementing this new grant program under section 4206, which directs the Secretary of Agriculture to ''distribute funds to the agricultural department or agency of each eligible state for the competitive distribution of subgrants to eligible entities for fiscal year 2019 and each fiscal year thereafter.''

Need and Use of the Information: The AMS Grants Division requests to collect information from agricultural agencies or departments in eligible states, which include Alaska, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, Hawaii, the Republic of the Marshall Islands, the Republic of Palau, and the United States Virgin Islands for this new grant program.

MGFSP is intended to increase the quantity and quality of locally grown food in food insecure communities, including through small-scale gardening, herding, and livestock operations, in eligible states. The Farm Bill authorized to be appropriated to the Secretary $10 million for fiscal year 2019 and each fiscal year thereafter. In fiscal year 2020, $5 million was appropriated.

Because MGFSP is voluntary, respondents request or apply for this specific non-competitive grant program, and in doing so, they provide information. AMS is the primary user of the information. The information collected is needed to certify that grant participants are complying with applicable program regulations, and the data collected is the minimum information necessary to effectively carry out the requirements of the program. The information collection requirements in this request are essential to carry out the intent of the 7 U.S.C. 7518, to provide the respondents the type of service they request, and to administer this program.

Description of Respondents: Grant applicants, grant recipients.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 318.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–01468 Filed 1–22–21; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 19, 2021.

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 and other forms of information technology.

Comments regarding this information collection received by February 24, 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.

Forest Service

Title: Interagency Generic Clearance for Federal Land Management Agencies Collaborative Visitor Feedback Surveys on Recreation and Transportation Related Programs and Systems.

OMB Control Number: 0596–0236.

Summary of Collection: Section 1119 of Public Law 112–141, the Moving Ahead for Progress in the 21st Century Act (MAP–21) requires the Secretary of Transportation to implement transportation planning procedures for Federal lands and tribal transportation facilities that are consistent with the planning processes required under sections 134 and 135 of title 23[6]. The section also specifies the collection and reporting of data necessary to implement the Federal lands transportation program, the Federal lands access program, and the tribal transportation program in accordance with the Indian Self-Determination and Education Assistance Act. The Federal Land Management Agencies (FLMAs) include, but are not limited to: Forest Service, the Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service, U.S. Army Corps of Engineers, Presidio Trust, U.S. Geological Survey, Bureau of Reclamation and the Department of Transportation. FLMAs will collect information to help them improve transportation conditions, site-or area-specific services, programs, services, and recreation and resource management of FLMA lands.

Need and Use of the Information: A combination of surveys, focus groups and interviews, are designed to collect information about visitors' perceptions, experiences and expectations, with respect to road and/or travel transportation conditions, services, and recreation opportunities at various FLMA locations and across areas that could include multiple locations managed by different FLMAs. This information is vital to establish and/or revise goals and objectives that will help improve transportation systems and recreation and resource management plans and to facilitate interagency coordination at area, state, regional, and/or national scales which will better meet the needs of the public and the resources under FLMA management.

Under this request, FS seeks to reinstate a discontinued information collection.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Estimated Number of Respondents: 139,875.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,830 hours.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–01464 Filed 1–22–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Quarterly Financial Report

AGENCY: Census Bureau, Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension of the Quarterly Financial Report, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 26, 2021.

ADDRESSES: Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference the Quarterly Financial Report in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2021–0001, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Brandi Maxson, Branch Chief, Quarterly Financial Branch, Economic Indicators Division, (301) 763–6600, and *brandi.maxson@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is planning to resubmit to the Office of Management and Budget for approval, the Quarterly Financial Report (QFR) program information collection forms. The QFR forms to be submitted for approval are: The QFR 200 (MT) long form (manufacturing, mining, wholesale trade, and retail trade); QFR 201 (MG) short form (manufacturing); and the QFR 300 (S) long form (information services and professional and technical services). The Census Bureau is not requesting any changes to the current forms.

The QFR program collects and publishes up-to-date aggregate statistics on the financial results and position of U.S. corporations. The QFR target population consists of all corporations engaged primarily in manufacturing with total assets of $5 million and over, and all corporations engaged primarily in mining; wholesale trade; retail trade; information; or professional and technical services (except legal services) industries with total assets of $50 million and over.

The QFR program is a principal federal economic indicator that has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. The QFR provides critical source data to the Bureau of Economic Analysis' quarterly estimates of Gross Domestic Product and Gross Domestic Income. The QFR data are also vital to the Federal Reserve Board's Financial Accounts. These organizations and others like the Bureau of Labor Statistics provide guidance, advice, and support to the QFR

program. Non-governmental data users are diverse and include universities, financial analysts, unions, trade associations, public libraries, banking institutions, and U.S. and foreign corporations.

Title 13 of the United States Code, Section 91 requires that financial statistics of business operations be collected and published quarterly. Public Law 114–72 extended the authority of the Secretary of Commerce to conduct the QFR Program under Section 91 through September 30, 2030.

II. Method of Collection

The Census Bureau uses two forms of data collection: Mail out/mail back paper survey forms and a secure encrypted internet data collection system called Centurion. Centurion has automatic data checks and is context-sensitive to assist respondents in identifying potential reporting problems before submission, thus reducing the need for follow-up from Census Bureau staff. Data collection through Centurion is completed via the internet, eliminating the need for downloading software and ensuring the integrity and confidentiality of the data.

Companies are asked to respond to the survey within 25 days of the end of the quarter for which the data are being requested. Census Bureau staff contact companies that have not responded by the designated time through letters, telephone calls, and/or email to encourage participation.

III. Data

OMB Control Number: 0607–0432.

Form Number(s): QFR 200 (MT), QFR 201 (MG), and QFR 300 (S).

Type of Review: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Affected Public: Business or other for-profit organizations; Manufacturing corporations with assets of $5 million or more and Mining, Wholesale Trade, Retail Trade, Information, Professional, Scientific, and Technical Services (excluding legal) with assets of $50 million or more.

Estimated Number of Respondents:

Form QFR 200 (MT)—4,500 per quarter = 18,000 annually

Form QFR 201 (MG)—2,900 per quarter = 11,600 annually

Form QFR 300 (S)—1,400 per quarter = *5,600* annually

Total 35,200 annually

Estimated Time per Response:

Form QFR 200 (MT)—Average hours 3.0

Form QFR 201 (MG)—Average hours 1.2

Form QFR 300 (S)—Average hours 3.0

Estimated Total Annual Burden Hours: 84,720 hours.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 91 and 224.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–01477 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[12/19/2020 through 1/10/2021]

Firm name	Firm address	Date accepted for investigation	Product(s)
P-Tec Corporation	2405 Commerce Circle, Alamosa, CO 81101.	12/22/2020	The firm manufactures indicator panels and display panels.
S.T.S., Inc., d/b/a Super Thin Saws	80 Commercial Drive, Waterbury, VT 05676.	12/30/2020	The firm manufactures circular saw blades.
The C. H. Hanson Company	2000 North Aurora Road, Naperville, IL 60563.	1/4/2021	The firm manufactures metal stamps, tags, and stencils.
Western Wire Products Company	770 Sun Park Drive, Fenton, MO 63026	1/6/2021	The firm manufactures miscellaneous wire forms and wire fasteners.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[12/19/2020 through 1/10/2021]

Firm name	Firm address	Date accepted for investigation	Product(s)
Konrady Plastics, Inc	1780 Coppes Court, Portage, IN 46368	1/6/2021	The firm manufactures miscellaneous plastic parts.
Sowers—CC Holding Company, Inc., d/b/a City Compressor, d/b/a City Compressor Remanufacturers.	9750 Twin Lakes Parkway, Charlotte, NC 28269.	1/7/2021	The firm manufactures compressors used in refrigerating and air conditioning equipment.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2021–01418 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–59–2020]

Foreign-Trade Zone (FTZ) 26—Atlanta, Georgia; Authorization of Limited Production Activity; OFS Fitel, LLC (Optical Fiber Products), Carrollton, Georgia

On September 21, 2020, OFS Fitel, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 26, in Carrollton, Georgia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 61719–619720, September 30, 2020). On January 19, 2021, the applicant was notified of the FTZ Board's decision that further review of part of the proposed activity is warranted. The FTZ Board authorized the production activity described in the notification on a limited basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to restrictions requiring that foreign-status optical fiber and optical bundles be admitted to the zone in privileged foreign status (19 CFR 146.41) and that foreign-status standard waterblock and non-waterblock aramid yarn be admitted to the zone in domestic/duty paid status (19 CFR 146.43).

Dated: January 19, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021–01534 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–58–2020]

Foreign-Trade Zone (FTZ) 134—Chattanooga, Tennessee; Authorization of Production Activity; Volkswagen Group of America Chattanooga Operations, LLC (Passenger Motor Vehicles), Chattanooga, Tennessee

On September 18, 2020, Volkswagen Group of America Chattanooga Operations, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 134, in Chattanooga, Tennessee.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 60131, September 24, 2020). On January 19, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: January 19, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021–01535 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–047]

Certain Carbon and Alloy Steel Cut-To-Length Plate From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Jiangsu Tiangong Tools Company LTD (TG Tools) did not make a *bona fide* sale of certain carbon and alloy steel cut-to-length plate (CTL plate) from the People's Republic of China (China) during the period of review (POR) March 1, 2018 through February 28, 2019. Therefore, we are rescinding this administrative review.

DATES: Applicable January 25, 2021.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen, 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) 482–3683.

Background

On April 3, 2020, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] On June 22, 2020, we received a case

[1] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Preliminary Intent To Rescind Antidumping Duty Administrative Review; 2018–2019,* 85 FR 18915 (April 3, 2020) (*Preliminary Results*).

brief from TG Tools.[2] On July 1, 2020, we received a rebuttal brief from ArcelorMittal USA LLC (the petitioner).[3]

Scope of the Order

The merchandise subject to this order is certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). For a full description of the scope, *see* the Issues and Decision Memorandum.[4]

Analysis of Comments Received

All issues raised in case briefs are listed in the appendix to this notice and are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum is available at *http://enforcement.trade.gov/frn/.*

Bona Fides Analysis

In the *Preliminary Results,* we found that TG Tools did not have a *bona fide* sale of CTL plate during the POR. After analyzing comments from interested parties, we continue to find that TG Tools did not have a *bona fide* sale of CTL plate during the POR. We reached this conclusion based on multiple factors, including: (1) The low quantity and high price of the sale; (2) atypical timing of the sale; (3) the excessive profit made by TG Tools' importer on the resale; and (4) other considerations, such as the fact that TG Tools made only a single sale of subject merchandise during the POR, which was a trial sale of a specialty product, and TG Tools' importer had not previously purchased the subject merchandise and made no subsequent purchases of the specialty product or any other subject merchandise. Our analysis led us to conclude that TG Tools' single POR sale is not representative of TG Tools' typical selling practices for subject merchandise.

Because we have determined that TG Tools had no *bona fide* sales during the POR, we are rescinding this administrative review.

Assessment Rate

Because Commerce is rescinding this administrative review, we have not calculated a company-specific dumping margin for TG Tools. TG Tools remains part of the China-wide entity and the entry of its subject merchandise during the POR will be assessed antidumping duties at the China-wide entity rate. The China-wide entity rate is 68.27 percent.[5]

Consistent with its recent notice,[6] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

As noted above, Commerce is rescinding this administrative review. Thus, we have not calculated a company-specific dumping margin for TG Tools. Therefore, entries of TG Tools' subject merchandise continue to be subject to the China-wide entity cash deposit rate of 68.27 percent. This cash deposit requirement shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(h)(1) and 19 CFR 351.221(b)(5).

Dated: January 19, 2021.

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. Discussion of the Issues
  Comment 1: Whether Commerce Has Legal Authority to Apply *Bona Fides* Sales Analysis in Administrative Reviews
  Comment 2: Whether Record Evidence Supports Finding that TG Tools' U.S. Sale was not *Bona Fide*
  Comment 3: Whether Commerce Should Apply AFA for Importer's Failure to Provide Requested Information
  Comment 4: Surrogate Country and Surrogate Values Selection
V. Recommendation

[FR Doc. 2021–01529 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Circular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Borusan Holding A.S., Borusan Mannesmann Yatirim Holding, Borusan Mannesmann

[2] *See* TG Tools' Letter, ''Administrative Review of the Antidumping Duty Order on Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Case Brief,'' dated June 22, 2020.

[3] *See* Petitioner's Letter, ''Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Petitioner's Rebuttal Brief,'' dated July 1, 2020.

[4] *See* Memorandum, ''Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 82 FR 8510 (January 26, 2017).

[6] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

Boru Sanayi ve Ticaret A.S., and Borusan Istikbal Ticaret T.A.S. (collectively, the Borusan Companies) received a *de minimis* net subsidy rate and that the exporters/producers of circular welded carbon steel pipes and tubes from the Republic of Turkey (Turkey) not selected for individual review received countervailable subsidies that are above *de minimis* during the period of review (POR), January 1, 2018 through December 31, 2018.

DATES: Applicable January 25, 2021.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–8362.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2020, Commerce published the preliminary results of this administrative review.[1] 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 60 days.[3] On October 28, 2020, Commerce extended the deadline for the final results to January 15, 2021.[4] For a summary of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[5]

Scope of the Order

The merchandise covered by the countervailing duty order is circular welded carbon steel pipes and tubes from Turkey. For a complete description of the scope of the order, *see* the accompanying Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' case briefs are addressed in the Issues and Decision Memorandum. The issues are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received, we made no changes to the net subsidy rates calculated for the Borusan Companies. However, we revised the net subsidy rate assigned to the firms not selected for individual examination. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable during the POR, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that confers a benefit to the recipient, and that the subsidy is specific.[6] For a complete description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

Final Results of the Review

In accordance with section 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(5), we determined an individual subsidy rate for the Borusan Companies and calculated a *de minimis* net subsidy rate for the period January 1, 2018 through December 31, 2018. As discussed in the accompanying Issues and Decision Memorandum, it is Commerce's practice in administrative reviews to calculate a rate for companies that are not individually examined by following the instructions to calculate the all-others rate under section 705(c)(5) of the Act and averaging the weighted-average net subsidy rates for the individually-reviewed companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[7] In this review, we calculated a *de minimis* net subsidy rate for the sole mandatory respondent. As a result, for the reasons discussed in the Issues and Decision Memorandum, we have determined that it is reasonable to assign to the firms subject to the review, but not selected for individual examination, the average of the above-*de minimis* net subsidy rates calculated for the mandatory respondents in the prior administrative review conducted in this proceeding, which is 1.18 percent *ad valorem*.[8] Therefore, we determine that the following total estimated net countervailable subsidy rates exist for the period January 1, 2018 through December 31, 2018:

Company	Net subsidy rate (percent)
Borusan Holding A.S. (also referred to as Borusan Holding), Borusan Mannesmann Yatirim Holding, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, the Borusan Companies)	* 0.37.
Borusan Ithicat ve Dagitim A.S	1.18
Borusan Mannesmann	1.18
Borusan Mannesmann Pipe US, Inc	1.18
Cagil Makina Sanayi ve Ticaret A.S	1.18
Eksen Makina	1.18

[1] *See Circular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Partial Rescission; Calendar Year 2018,* 85 FR 18917 (April 3, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[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] *See* Memorandum, ''Circular Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated October 28, 2020.

[5] *See* Memorandum, ''Issues and Decision memorandum for the Final Results of Countervailing Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; 2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See, e.g., Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386, 37387 (June 29, 2010).

[8] *See Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part; Calendar Year 2017,* 84 FR 56173, 56175 (October 21, 2019) (*Pipe and Tube from Turkey 2017*) and accompanying IDM at 5–6.

Company	Net subsidy rate (percent)
Erbosan Erciyas Boru Sanayi ve Ticaret A.S	1.18
Guner Eksport	1.18
Guven Celik Born San. Ve Tic. Ltd	1.18
Guven Steel Pipe	1.18
Kalibre Boru Sanayi ve Ticaret AS	1.18
MTS Lojistik ve Tasimacilik Hizmetleri TIC A.S. Istanbul	1.18
Net Boru Sanayi ve Dis Ticaret Koll. Sti	1.18
Noksel Celik Boru Sanayi AS	1.18
Perfektup Ambalaj San. ve Tic. A.S	1.18
Schenker Arkas Nakliyat ve Ticaret A.S	1.18
Umran Celik Born Sanayii A.S	1.18
Umran Steel Pipe Inc	1.18
Vespro Muhendislik Mimarlik Danismanlik Sanayi ve Ticaret AS	1.18
Yucel Boru ve Profil Endustrisi A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S., and Cayirova Boru Sanayi ve Ticaret A.S. (Yucel Companies)	1.18

* (de minimis)

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Consistent with its recent notice,[9] Commerce intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). Because we have calculated a *de minimis* countervailable subsidy rate for the Borusan Companies, we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties in accordance with 19 CFR 351.212. We will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the remaining above listed companies, entered or withdrawn from warehouse for consumption from January 1, 2018 through December 31, 2018, at the *ad valorem* rates listed above for each respective company.

Cash Deposit Instructions

In accordance with section 751(a)(2)(C) of the Act, we intend to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above, with the exception of the Borusan Companies, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. Because the countervailable subsidy rate for the Borusan Companies is *de minimis,* Commerce will instruct CBP to collect cash deposits at a rate of zero for the Borusan Companies for all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most-recent company specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 15, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

I. Summary
II. Background
III. Scope of the Order
IV. Period of Review
V. Non-Shipment Claims
VI. Non-Selected Rate
VII. Subsidies Valuation Information
VIII. Analysis of Programs
IX. Analysis of Comments
  Comment 1: Whether to Include Purchases of All Series Grades of Hot-Rolled Steel (HRS) in the HRS Benchmark to Measure the Adequacy of Remuneration for HRS
  Comment 2: Whether Commerce Should Include Istikbal's Export Credit Bank of Turkey (Eximbank) Loan in the Benefit Analysis for Short Term Pre-Shipment Rediscount Program
X. Recommendation

[FR Doc. 2021–01497 Filed 1–22–21; 8:45 am]

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[9] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 884 (Jan.15, 2021).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) are being sold in the United States at prices below normal value. The period of review (POR) is September 1,

2018 through August 31, 2019. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 25, 2021.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann, Mark Flessner, or Frank Schmitt, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0698, (202) 482–6312, or (202) 482–4880, respectively.

SUPPLEMENTARY INFORMATION:

Background

These preliminary results are made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this administrative review on November 12, 2019.[1] Commerce selected Hyundai Steel Company (Hyundai Steel) and SeAH Steel Corporation (SeAH) as the two mandatory respondents in this review.[2] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[3] On June 30, 2020, Commerce extended the deadline of the preliminary results of review by 100 days, until October 29, 2020, in accordance with 751(a)(3)(A) of the Act.[4] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days,[5] thereby extending the deadline for these preliminary results until December 28, 2020. On November 25, 2020, in accordance with section 751(a)(3)(A) of the Act, Commerce extended the preliminary results of review by an additional 18 days, until January 15, 2021.[6]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum, dated concurrently with these preliminary results and hereby adopted by this notice.[7] A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The product covered by the *Order*[8] is OCTG from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(2) of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Commerce preliminarily finds that a cost-based particular market situation (PMS) existed in Korea during the POR concerning the cost of hot-rolled coil (HRC) as a component of the cost of production for the OCTG that Hyundai Steel and SeAH produced.[9] We quantified the impact of the particular market situation on the material cost of HRC, and derived a corresponding adjustment factor that, when applied to the cost of HRC, accounts for the distortions induced by the observed particular market situation.[10] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rates for Non-Examined Companies

The statute and Commerce's regulations do not address the rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have preliminarily calculated weighted-average dumping margins for SeAH that is not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce preliminarily has assigned to the companies not individually examined (*see* Appendix II for a full list of these companies) a margin of 1.07 percent, which is the weighted average dumping margin of SeAH for these preliminary results of review.[11]

Preliminary Results of Review

Commerce preliminarily determines that, for the period September 1, 2018 through August 31, 2019, the following weighted-average dumping margins exist:

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 61011 (November 12, 2019) (*Initiation Notice*).

[2] *See* Memorandum, ''2018–2019 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Republic of Korea: Respondent Selection,'' dated December 23, 2019.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated April 24, 2020 (First Tolling Memorandum).

[4] *See* Memorandum, ''Certain Oil Country Tubular Goods from the Republic of Korea, 2018–2019: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review,'' dated June 30, 2020 (First Extension of Preliminary Review Results Memorandum).

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020 (Second Tolling Memorandum).

[6] *See* Memorandum, ''Certain Oil Country Tubular Goods from the Republic of Korea, 2018–2019: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review,'' dated November 25, 2020 (Second Extension of Preliminary Review Results Memorandum).

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results in the 2018–2019 Administrative Review of Oil Country Tubular Goods from the Republic of Korea'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *See Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014) (*Order*).

[9] For a complete discussion, *see* Memorandum, ''2018–2019 Administrative Review of Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea: Decisions on Particular Market Situation Allegations,'' dated concurrently with this **Federal Register** *Notice* (PMS Memorandum).

[10] *See* PMS Memorandum.

[11] For more information regarding the calculation of this margin, *see* Memorandum, ''Preliminary Results of the 2018–2019 Administrative Review of Certain Oil Country Tubular Goods from the Republic of Korea; Calculation of the Margin for Non-Examined Companies,'' dated concurrently with this memorandum.

Exporter/producer	Estimated weighted-average dumping margin (percent)
Hyundai Steel Company	0.00
SeAH Steel Corporation	1.07
Non-examined companies [12]	1.07

Disclosure, Public Comment, and Opportunity To Request a Hearing

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[13] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[14]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15] Case and rebuttal briefs should be filed using ACCESS [16] and must be served on interested parties.[17] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[18] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[19] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[20]

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, if the respondent reported reliable entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported reliable entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [21]

For entries of subject merchandise during the POR produced by Hyundai Steel or SeAH for which the producer did not know its merchandise was destined for the United States, or for any respondent for which we have a final determination of no shipments, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[22]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the companies listed in the final results of review will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 5.24 percent, the all-others rate established in the less-than-fair-value investigation.[23] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[12] *See* Appendix II.

[13] *See* 19 CFR 351.309(d).

[14] *See* 19 CFR 351.303 (for general filing requirements); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

[16] *See generally* 19 CFR 351.303.

[17] *See* 19 CFR 351.303(f).

[18] *See* 19 CFR 351.310(c).

[19] *See* 19 CFR 351.310(d).

[20] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[21] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[22] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[23] *See Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony With Final Determination,* 81 FR 59603 (August 30, 2016).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

The preliminary results of this administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 15, 2021.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Rates for Non-Examined Companies
V. Affiliation
VI. Discussion of Methodology
VII. Currency Conversion
VIII. Recommendation

Appendix II

List of Companies Not Individually Examined

1. AJU Besteel Co., Ltd.
2. Blue Sea Precision Tube Co., Ltd.
3. Bo Myung Metal Co., Ltd.
4. BUMA CE Co., Ltd.
5. Busung Steel Co., Ltd.
6. Chang Won Bending Co., Ltd.
7. Daeho P&C Co., Ltd.
8. Daou Precision Ind. Co.
9. Dongyang Steel Pipe Co., Ltd.
10. Dongbu Incheon Steel Co., Ltd.
11. Dongkuk Steel Mill Co., Ltd.
12. EEW Korea Co., Ltd.
13. Global Solutions Co., Ltd.
14. Hansol Metal Co., Ltd.
15. HiSteel Co., Ltd.
16. HPP Co., Ltd.
17. Husteel Co., Ltd.
18. Hyundai Group
19. Hyundai Corporation
20. Hyundai HYSCO
21. Hyundai RB Co., Ltd.
22. Hyundai Steel Company
23. ILJIN Steel Corporation
24. Keonwoo Metals Co., Ltd.
25. K Steel Corporation
26. KF UBIS Co., Ltd.
27. Korea Steel Co., Ltd.
28. Kukje Steel Co., Ltd.
29. KPF Co., Ltd.
30. Kumkang Kind Co., Ltd.
31. Kumsoo Connecting Co., Ltd.
32. Master Steel Corporation
33. MCK Co., Ltd.
34. MS Pipe Co., Ltd.
35. Msteel Co., Ltd.
36. Nexen Corporation
37. NEXTEEL Co., Ltd.
38. Pneumatic Plus Korea Co., Ltd.
39. POSCO International Corporation
40. PSG Co., Ltd.
41. Pusan Fitting Corporation
42. SeAH FS Co., Ltd.
43. SeAH Steel Corporation
44. Sejong Ind. Co., Ltd.
45. Seokyoung Steel & Technology Co., Ltd.
46. SIC Tube Co., Ltd.
47. ST Tubular Inc.
48. Sungkwang Bend Co., Ltd.
49. TGS Pipe Co., Ltd.
50. TJ Glovsteel Co., Ltd.
51. TSP Corporation
52. Union Pipe MFG Co., Ltd.
53. WSG Co., Ltd.

[FR Doc. 2021–01498 Filed 1–22–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–881]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Hyundai Steel Company (Hyundai) and POSCO/POSCO International Corporation (PIC), the two companies selected for individual examination, did not sell certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) in the United States at prices below normal value during the period of review (POR) September 1, 2018 through August 31, 2019. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 25, 2021.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, George McMahon, or Marc Castillo, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475, (202) 482–1167, or (202) 482–5019, respectively.

SUPPLEMENTARY INFORMATION:

Background

These preliminary results are made in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). On November 12, 2019, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on cold-rolled steel from Korea for 38 companies.[1] Commerce selected Hyundai and POSCO/POSCO International Corporation (hereafter, POSCO/PIC)[2] as the two mandatory respondents in this review.[3] On February 5, 2020, the petitioners[4] withdrew their request for review of all companies except for Dongbu Incheon Steel Co., Ltd., Dongbu Steel Co., Ltd., Hyundai, POSCO, PDW, and PIC.[5]

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[6] On July 20, 2020, Commerce extended the deadline for the preliminary results by 100 days, in accordance with 751(a)(3)(A) of the Act.[7] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[8] On December 3, 2020, in accordance with section 751(a)(3)(A) of the Act, Commerce extended the preliminary results of

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[1] *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews, 84 FR 61011 (November 12, 2019) (*Initiation Notice*).

[2] POSCO reported that the company formerly known as Daewoo International Corporation (DWI) and POSCO Daewoo (PDW) now does business as PIC. *See* POSCO/PDW's Letter, ''Cold-Rolled Steel Flat Products from the Republic of Korea; 2018–2019: POSCO's Respondent Selection Comments,'' dated December 11, 2019, at 2–3. In its questionnaire response, POSCO subsequently reported that PDW became PIC on March 18, 2019. *See* POSCO Section A Initial Questionnaire Response, dated February 18, 2020 at 1 and A–1. Based on our analysis in the instant review, we are preliminarily collapsing POSCO and PIC, which we find to be the successor-in-interest to PDW. *See* Memorandum, ''Third Administrative Review of Cold-Rolled Steel Flat Products from the Republic of Korea: POSCO and POSCO International Corporation Affiliation and Collapsing Memorandum,'' dated concurrently with these preliminary results. Accordingly, hereafter we refer to the collapsed entity as ''POSCO/PIC.''

[3] *See* Memorandum, ''2018–2019 Administrative Review of Cold-Rolled Steel Flat Products from the Republic of Korea: Respondent Selection,'' dated January 15, 2020.

[4] The petitioners are ArcelorMittal USA LLC, AK Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners).

[5] *See* Petitioners' Letter, ''Cold-Rolled Steel Flat Products from the Republic of Korea: Petitioners' Partial Withdrawal of Request for Review,'' dated February 5, 2020.

[6] *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.

[7] *See* Memorandum, ''Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated July 20, 2020.

[8] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

review by an additional 18 days, until January 15, 2021.[9]

On October 7, 2020, Commerce published a notice in the **Federal Register** partially rescinding the instant administrative review of 32 companies based on the petitioners' timely withdrawal of their requests for review of those companies.[10] The administrative review will continue with respect to KG Dongbu Steel,[11] Hyundai, and POSCO/PIC.

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[12] A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The product covered by the *Order*[13] is cold-rolled steel from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a) of the Act. Commerce has calculated constructed export prices in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. Commerce preliminarily finds that a cost-based particular market situation (PMS) existed in Korea during the POR concerning the cost of hot-rolled coil (HRC) as a component of the cost of production for the cold-rolled steel that Hyundai Steel and POSCO/PIC produced.[14] Specifically, we quantified the impact of the PMS on the material cost of HRC, and derived a corresponding adjustment factor that, when applied to the cost of HRC, accounts for the distortions induced by the observed PMS.[15] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rate for Non-Examined Company

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we preliminarily calculated a zero percent dumping margin for Hyundai and POSCO/PIC and have assigned this rate (*i.e.,* 0.00 percent) to the company not individually examined (*i.e.,* KG Dongbu Steel Co., Ltd.).[16]

Preliminary Results of Review

Commerce preliminarily determines that, for the period September 1, 2018 through August 31, 2019, the following weighted-average dumping margins exist:

Producer or exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	0.00
POSCO/POSCO International Corporation	0.00
KG Dongbu Steel Co., Ltd	0.00

Disclosure, Public Comment, and Opportunity To Request a Hearing

We intend to disclose the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[17] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[18]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[19] Case and rebuttal briefs should be filed using ACCESS[20] and must be served on interested parties.[21] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS. An electronically filed request

[9] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2018–2019 Antidumping Duty Administrative Review'' dated December 3, 2020.

[10] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Partial Rescission of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 63253 (October 7, 2020).

[11] *See Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Antidumping Duty and Countervailing Duty Changed Circumstance Reviews,* 86 FR 287 (January 5, 2021). Commerce preliminary determined that KG Dongbu Steel Co., Ltd. (KG Dongbu Steel) is the successor-in-interest to Dongbu Steel Co., Ltd. (Dongbu Steel) and Dongbu Incheon Steel Co., Ltd. (Dongbu Incheon) for purposes of determining antidumping duty (AD) cash deposits and liabilities pursuant to the AD orders on certain cold-rolled steel and certain corrosion resistant steel products (CORE) from Korea.

[12] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Certain Cold Rolled Steel Flat Products from the Republic of Korea; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[13] *See Certain Cold Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 64432 (September 20, 2016) (*Order*).

[14] For a complete discussion, *see* Memorandum, ''2018–2019 Administrative Review of Antidumping Duty Order on Certain Cold Rolled Steel Flat Products from the Republic of Korea: Decisions on Particular Market Situation Allegations,'' dated concurrently with this notice (PMS Memorandum).

[15] *See* PMS Memorandum.

[16] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016).

[17] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[18] *See* 19 CFR 351.303 (for general filing requirements); *see also Temporary Rule.*

[19] *See* 19 CFR 351.309(c)(2) and (d)(2).

[20] *See generally* 19 CFR 351.303.

[21] *See* 19 CFR 351.303(f).

must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[22] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[23] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[24]

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[25] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review and the respondent reported reliable entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported reliable entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[26]

For entries of subject merchandise during the POR produced by Hyundai and POSCO/PIC for which the producer did not know its merchandise was destined for the United States, or for any respondent for which we have a final determination of no shipments, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[27]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Hyundai, POSCO/PIC, and other companies listed in the final results of review will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 20.33 percent,[28] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 15, 2021.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Affiliation and Collapsing
V. Rate for Non-Examined Company
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2021–01496 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–DS–P

[22] *See* 19 CFR 351.310(c).

[23] *See* 19 CFR 351.310(d).

[24] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[25] *See* 19 CFR 351.212(b)(1).

[26] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[27] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[28] *See Order.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region Gear Identification Requirements

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995

(PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 26, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0352 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Keeley Kent, (206) 247–8252 or *keeley.kent@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The success of fisheries management programs depends significantly on regulatory compliance. The requirements that fishing gear be marked are essential to facilitate enforcement. The ability to link fishing gear to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The marking of fishing gear is also valuable in actions concerning damage, loss, and civil proceedings. The regulations specify that fishing gear must be marked with the vessel's official number, Federal permit or tag number, or some other specified form of identification. The regulations further specify how the gear is to be marked (*e.g.,* location and color). Law enforcement personnel rely on gear marking information to assure compliance with fisheries management regulations. Gear that is not properly identified is confiscated. Gear violations are more readily prosecuted when the gear is marked, and this allows for more cost-effective enforcement. Gear marking helps ensure that a vessel harvests fish only from its own traps/pots/other gear and the gear are not illegally placed. Cooperating fishermen also use the gear marking numbers to report suspicious or non-compliant activities that they observe, and to report placement or occurrence of gear in unauthorized areas. The identifying number on fishing gear is used by the National Marine Fisheries Service (NMFS), the United States Coast Guard (USCG), and other marine agencies in issuing regulations, prosecutions, and other enforcement actions necessary to support sustainable fisheries behaviors as intended in regulations. Regulation-compliant fishermen ultimately benefit from these requirements, as unauthorized and illegal fishing is deterred, and more burdensome regulations are avoided.

II. Method of Collection

The physical marking of fishing buoys is done by fishermen in the Pacific Coast Groundfish Fishery according to regulation.

III. Data

OMB Control Number: 0648–0352.
Form Number(s): None.
Type of Review: Regular submission, extension of a current information collection.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 811.
Estimated Time per Response: 15 minutes per gear marking.
Estimated Total Annual Burden Hours: 3,236 hours.
Estimated Total Annual Cost to Public: $3,236.
Respondent's Obligation: Mandatory.
Legal Authority: 50 CFR 660.12.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–01473 Filed 1–22–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648–XA826

Interagency Working Group on Illegal, Unreported, and Unregulated Fishing; Reopening of Comment Period

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

ACTION: Reopening of public comment period.

SUMMARY: On December 16, 2020, NMFS requested input on the Work Plan of the Interagency Working Group on Illegal, Unreported, and Unregulated Fishing. That notice requested comments by January 15, 2021. NMFS received comments requesting that the comment period be extended. We are reopening the comment period to fulfill the request and provide additional time to submit comments.

DATES: Information should be received on or before February 24, 2021.

ADDRESSES: Information may be submitted electronically to *iuu.fishing@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Mi Ae Kim, phone 301–427–8365 or email *mi.ae.kim@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Maritime Security and Fisheries Enforcement Act (Maritime SAFE Act) became law on December 20, 2019. The overarching purpose of the Maritime SAFE Act is to support a whole-of-government approach across the Federal government to counter illegal, unreported, and unregulated (IUU) fishing and related threats to maritime security. It seeks to achieve this through a number of means, including: Improve data sharing that enhances surveillance, enforcement, and prosecution against

IUU fishing and related activities; support coordination and collaboration to counter IUU fishing within priority regions; and increase and improve global transparency and traceability across the seafood supply chain to deter IUU fishing and strengthen fisheries management and food security; improve global enforcement operations against IUU fishing; and prevent the use of IUU fishing as a financing source for transnational organized crime groups.

Part II of the Maritime SAFE Act calls for the establishment of the Interagency Working Group on IUU Fishing, specifying the chair and agency membership in the Working Group, as well as the Working Group's responsibilities. This Working Group met for the first time in June 2020. NOAA is chair of this Working Group for its first 3 years, joined by the U.S. Department of State and U.S. Coast Guard as deputy chairs.

The Working Group has developed its Work Plan, a living document that will serve as the basis for a 5-year strategic plan that is due to Congress by the end of calendar year 2021. In this Work Plan, the Working Group identified ongoing existing activities, as well as new lines of effort, that comprise the initial focus of Federal government actions under the purview of the Working Group. Many of the new activities proposed in the Work Plan emphasize the use of maritime intelligence and the involvement of military departments to support efforts to combat IUU fishing. The Work Plan can be found here: *https://www.fisheries.noaa.gov/national/maritime-safe-act-interagency-working-group-iuu-fishing*.

The Working Group is exploring potential ways in which the government and private sector stakeholders can work together to combat IUU fishing and enhance maritime security. We are interested to hear from the seafood industry, non-governmental organizations, and other stakeholders that are engaged in efforts to combat IUU fishing. We welcome comments in relation to the Work Plan, particularly any responses to the following questions:

- Which activities in the Work Plan are connected to the expertise or interests of your organization related to combating IUU fishing?
- What kinds of distinctive capabilities or capacities could your organization bring to the activities in the Work Plan?
- Which specific activities could serve as the basis for a partnership between your organization and particular Federal agencies?
- Are there specific geographic regions or seafood industry sectors (*e.g.,* harvesting, processing, or trade) where your organization focuses efforts to build capacity in combating IUU fishing that could be tied to activities in the Work Plan?
- Which elements in the Work Plan do you see as priorities to include in the 5-year Strategic Plan of the Working Group?

Dated: January 19, 2021.

Alexa Cole,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2021–01493 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Saltwater Angler Registry and State Exemption Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 26, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0578 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Lauren Dolinger Few, National Marine Fisheries Service, Office of Science and Technology, 1315 East-West Hwy./FST1, Silver Spring, MD 21910, Phone: (301) 427–8127 *lauren.dolinger.few@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved collection. The National Saltwater Angler Registry Program (Registry Program) was established to implement recommendations included in the review of national saltwater angling data collection programs conducted by the National Research Council (NRC) in 2005/2006, and the provisions of the Magnuson-Stevens Reauthorization Act, codified at Section 401(g) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which require the Secretary of Commerce to commence improvements to recreational fisheries surveys, including establishing a national saltwater angler and for-hire vessel registry, by January 1, 2009. A final rule that includes regulatory measures to implement the Registry Program (RIN 0648–AW10) was adopted and codified in 50 CFR 600, subpart P.

The Registry Program collects identification and contact information from those anglers and for-hire vessels who are involved in recreational fishing in the United States Exclusive Economic Zone or for anadromous fish in any waters, unless the anglers or vessels are exempted from the registration requirement. Data collected includes—for anglers: Name, address, date of birth, telephone contact information and region(s) of the country in which they fish; for for-hire vessels: Owner and operator name, address, date of birth, telephone contact information, vessel name and registration/documentation number and home port or primary operating area. This information is compiled into a national and/or series of regional registries that is being used to support surveys of recreational anglers and for-hire vessels to develop estimates of recreational angling effort.

II. Method of Collection

Persons may register online at a NOAA-maintained website. Registration cards, valid for one year from the date of issuance, are mailed to registrants.

III. Data

OMB Control Number: 0648–0578.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 1,204.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 61.

Estimated Total Annual Cost to Public: $1,527.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (MSA).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–01470 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Socioeconomics of Coral Reef Conservation

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 26, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0646 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mary Allen, NOAA Office for Coastal Management, Coral Reef Conservation Program, 1305 East-West Highway, Silver Spring, MD 20910, Telephone (240) 533–0784 or *Mary.Allen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for the revision and extension of a currently approved information collection under OMB Control Number 0648–0646. The information collection is part of the National Coral Reef Monitoring Program (NCRMP), which was established by the National Oceanic and Atmospheric Administration (NOAA) Coral Reef Conservation Program (CRCP) under the authority of the Coral Reef Conservation Act of 2000. The CRCP was created to safeguard and ensure the welfare of the coral reef ecosystems along the coastlines of America's states and territories. In accordance with its mission goals, NOAA developed a survey to track relevant information regarding each jurisdiction's population, social and economic structure, the benefits of coral reefs and related habitats, the impacts of society on coral reefs, and the impacts of coral management on communities. The survey is repeated in each jurisdiction every five to seven years in order to provide longitudinal data and information for managers to effectively conserve coral reefs for current and future generations.

The purpose of this information collection is to obtain human dimensions information from residents in the seven United States (U.S.) jurisdictions containing coral reefs: Florida, U.S. Virgin Islands (USVI), Puerto Rico, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). Specifically, NOAA is seeking information on the behaviors and activities related to coral reefs, as well as information on perceptions of coral reef conditions and attitudes toward specific reef conservation activities. Each survey has a core set of questions that are the same for all jurisdictions to allow for information to be tracked over time. To account for geographical, cultural and linguistic differences between jurisdictions, the survey questions include items that are specific to the local context and developed based on jurisdictional partner feedback.

We intend to use the information collected through this instrument for research purposes, as well as for measuring and improving the results of our reef protection programs. Because many of our efforts to protect reefs rely on education and changing attitudes toward reef protection, the information collected will allow CRCP to ensure that programs are designed appropriately at the start, future program evaluation efforts are as successful as possible, and outreach efforts are targeting the intended recipients with useful information.

Pursuant to a request from the Office of Management and Budget (OMB), this collection of information is being revised to restructure these surveys as a hybrid-generic collection.

II. Method of Collection

Information will be collected using the most efficient and effective methodology that is feasible in the individual jurisdiction. For the three

years covered by this clearance, data will be collected via in-person interviews in American Samoa, Puerto Rico, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI).

III. Data

OMB Control Number: 0648–0646.
Form Number(s): None.
Type of Review: Regular submission [Revision and extension of an existing information collection].
Affected Public: Individuals or households.
Estimated Number of Respondents: 9,840.
Estimated Time per Response: 20 minutes per response.
Estimated Total Annual Burden Hours: 1,093 hours.
Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.
Respondent's Obligation: Voluntary.
Legal Authority: Coral Reef Conservation Act of 2000.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–01475 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Socio-Economic Survey of Hired Captains and Crew in New England and Mid-Atlantic Commercial Fisheries

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 26, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0636 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Lisa L. Colburn, Social Scientist, NOAA/Northeast Fisheries Science Center, (401–782–3253), *lisa.l.colburn@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision to an approved collection. This collection is currently approved for implementation in New England and the Mid-Atlantic regions by NOAA National Marine Fisheries Service, Northeast Fisheries Science Center's Social Sciences Branch (NEFSC–SSB). The NEFSC–SSB, in collaboration with the Southeast Fisheries Science Center Social Science Research Group (SEFSC–SSRG), requests a revision to expand the geographic scope of the survey to include South Atlantic and Gulf of Mexico regions, an associated collection title change (''Socio-Economic Survey of Hired Captains and Crew in New England, Mid-Atlantic, South Atlantic and Gulf of Mexico Commercial Fisheries''), and to make minor revisions to the survey form that address regional differences in fisheries. The NEFSC and SEFSC seek to conduct surveys to provide for the ongoing collection of social and economic data related to the fishing industries in those states. The purpose of this survey is to assess and track over time the social and economic conditions of commercial fishing crews and hired captains for which little is known. This survey will provide data on social and economic impacts for this population and the changes in fisheries as a result of regulatory changes. Data to be collected include demographic information on crew, wage calculations systems, individual and community well-being, fishing practices, job satisfaction, job opportunities, and attitudes toward fisheries management. The National Environmental Policy Act (NEPA) and Magnuson-Stevens Conservation and Management Act (MSA) both contain requirements for considering the social and economic impacts of fishery management decisions. There is a need to understand how such fishery management policies and programs will affect the social and economic characteristics of those involved in the commercial fishing industry. To help meet these requirements of NEPA and MSA, the NEFSC and SEFSC will collect data on an ongoing basis to track how socio-economic characteristics of fisheries are changing over time and the impact of fishery management policies and programs implemented in New England, Mid-Atlantic, South Atlantic and Gulf of Mexico regions.

II. Method of Collection

This information will be collected through in-person intercept interviews and telephone.

III. Data

OMB Control Number: 0648–0636.
Form Number(s): None.
Type of Review: Regular (revision of a previously approved information collection).
Affected Public: Individuals, households; Business or other for-profit organizations.
Estimated Number of Respondents: 946.
Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 236.5.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: NEPA and MSA.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–01472 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA816]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Oil and Gas Activities in Cook Inlet, Alaska

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

ACTION: Notice; issuance of Letter of Authorization.

SUMMARY: Pursuant to the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, NMFS issued a Letter of Authorization (LOA) to Hilcorp Alaska LLC (Hilcorp) to take marine mammals incidental to oil and gas activities in Cook Inlet, Alaska.

DATES: Applicable until April 21, 2021.

FOR FURTHER INFORMATION CONTACT: Sara Young, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary

NMFS issued regulations governing the take of 11 species of marine mammal, by Level A and Level B harassment, incidental to Hilcorp's oil and gas activities on July 31, 2019 (84 FR 37442). These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during the specified activities. As further detailed in the regulations (50 CFR 217.167), adaptive management measures allow NMFS to modify or renew LOAs as necessary if doing so creates a reasonable likelihood of more effective mitigation and monitoring. NMFS issued the first LOA to Hilcorp under these regulations on July 31, 2019. NMFS published a **Federal Register** notice seeking public comment on its proposal to modify the Year 1 LOA issued to Hilcorp on August 16, 2019 (84 FR 41957) and published a notice of modification on October 4, 2019 (84 FR 53119). The Year 1 LOA expired on July 30, 2020. To better align with the open water season, Hilcorp applied for their Year 2 LOA with a start date of April 1, 2020, rather than waiting until the expiration of their Year 1 LOA in July 2020. NMFS reviewed the application and issued the Year 2 LOA on April 22, 2020. In error, NMFS did not publish a **Federal Register** notice upon issuance, but the signed LOA and Hilcorp's application were published on NMFS' website immediately upon issuance.

Authorization

NMFS has issued a LOA (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska*) to Hilcorp Alaska LLC for the potential harassment of small numbers of four marine mammal species incidental to oil and gas activities in Cook Inlet, Alaska, provided the mitigation, monitoring and reporting requirements of the rulemaking are incorporated.

Dated: January 15, 2021.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–01426 Filed 1–22–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Publication of Housing Price Inflation Adjustment

AGENCY: Office of the Under Secretary (Personnel and Readiness), Department of Defense (DoD).

ACTION: Notice of housing price inflation adjustment.

SUMMARY: The Department of Defense is announcing the 2020 rent threshold under the Servicemembers Civil Relief Act. Applying the inflation adjustment for 2020, the maximum monthly rental amount as of January 1, 2021, will be $4,089.62.

DATES: These housing price inflation adjustments are effective January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Patrick Schwomeyer, Office of the Under Secretary of Defense for Personnel and Readiness, (703) 692–8170.

SUPPLEMENTARY INFORMATION: The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. 3951, prohibits a landlord from evicting a Service member (or the Service member's family) from a residence during a period of military service, except by court order. The law as originally passed by Congress applied to dwellings with monthly rents of $2,400 or less. The law requires the Department of Defense to adjust this amount annually to reflect inflation and to publish the new amount in the **Federal Register**. Applying the inflation adjustment for 2020, the maximum monthly rental amount for 50 U.S.C. App. 3951(a)(1)(A)(ii) as of January 1, 2021, will be $4,089.62.

Dated: January 19, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–01481 Filed 1–22–21; 8:45 am]

BILLING CODE 5001–06–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting; Farm Credit System Insurance Corporation Board

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice; regular meeting.

SUMMARY: Notice is hereby given, in accordance with the provisions of Article VI of the Bylaws of the Farm Credit System Insurance Corporation (FCSIC), of a forthcoming regular meeting of the Board of Directors of FCSIC.

DATES: January 28, 2021, at 10:00 a.m. EDT, until such time as the Board may conclude its business. *Note: Because of the COVID–19 pandemic, we will conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions below for board meeting visitors.*

ADDRESSES: Because of the COVID–19 pandemic, we will conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions in **SUPPLEMENTARY INFORMATION** for board meeting visitors.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Board of the Farm Credit System Insurance Corporation, (703) 883–4009. TTY is (703) 883–4056.

SUPPLEMENTARY INFORMATION: Instructions for attending the virtual meeting: Parts of this meeting of the Board will be open to the public, and parts will be closed. To observe the open portion of the virtual meeting, go to *FCSIC.gov,* select ''News & Events,'' then ''Board Meetings.'' There you will find a description of the meeting and ''Instructions for board meeting visitors.'' If you need assistance for accessibility reasons or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are as follows:

A. Approval of Minutes

- December 17, 2020

B. New Business

- Review of Insurance Premium Rates
- Policy Statement—Receivership and Conservatorship Counsel
- Policy Statement—Appraisals
- Policy Statement—Allowance for Insurance Fund Loss

C. Closed Session—Audit Committee

- CFO Report—List & Status of All Contracts
- Annual Report on Whistleblower Activity

Dated: January 19, 2021.

Dale Aultman,

Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 2021–01495 Filed 1–22–21; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receivership

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for the institution listed below intends to terminate its receivership for said institution.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIP

Fund	Receivership name	City	State	Date of appointment of receiver
10148	Century Bank, FSB	Sarasota	FL	11/13/2009

The liquidation of the assets for the receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing, identify the receivership to which the comment pertains, and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 19, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–01543 Filed 1–22–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA20

Guidelines for Appeals of Material Supervisory Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of guidelines.

SUMMARY: The Federal Deposit Insurance Corporation has adopted revised Guidelines for Appeals of Material Supervisory Determinations to establish an independent office that would replace the existing Supervision Appeals Review Committee and to modify the procedures and timeframes for considering formal enforcement-related decisions through the supervisory appeals process.

DATES: The new Guidelines for Appeals of Material Supervisory Determinations will become effective once the Office of Supervisory Appeals is fully operational.

FOR FURTHER INFORMATION CONTACT: Sheikha Kapoor, Senior Counsel, Legal Division, (202) 898–3960, *skapoor@fdic.gov*; James Watts, Counsel, Legal Division, (202) 898–6678, *jwatts@fdic.gov*.

SUPPLEMENTARY INFORMATION:

On September 1, 2020, the Federal Deposit Insurance Corporation (FDIC) published in the **Federal Register** for notice and comment proposed amendments to its Guidelines for Appeals of Material Supervisory Determinations (Guidelines), which provide the process by which insured depository institutions (IDIs) may appeal material supervisory determinations made by the FDIC.[1] The FDIC proposed to establish an independent office that would replace the existing Supervision Appeals Review Committee (SARC) and to modify the procedures and timeframes for considering formal enforcement-related decisions through the supervisory appeals process. The comment period ended October 20, 2020, and the FDIC received fifteen comment letters. These comments and the FDIC's responses are summarized below.

I. Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration) to establish an ''independent intra-agency appellate process'' to review material supervisory determinations.[2] The Riegle Act defines the term ''independent appellate process'' to mean ''a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.'' [3] In the appeals process, the FDIC is required to ensure that: (1) An IDI's appeal of a material supervisory determination is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.[4]

The Riegle Act defines ''material supervisory determinations'' to include determinations relating to: (1) Examination ratings; (2) the adequacy of loan loss reserve provisions; and (3) classifications on loans that are significant to an institution.[5] Expressly excluded from this definition are decisions to appoint a conservator or receiver for an IDI or to take prompt corrective action pursuant to Section 38 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831o.[6] Finally, Section 309(g) of the Riegle Act expressly provides that the requirement to establish an appeals process shall not affect the authority of the Federal banking agencies to take enforcement or supervisory actions against an IDI.[7]

A. Structure of the Supervisory Appeals Review Committee

On March 21, 1995, the FDIC's Board of Directors (Board) adopted the Guidelines to implement Section 309(a). The Board, at that time, established the SARC to consider and decide appeals of material supervisory determinations.[8] The SARC was initially comprised of five members: The FDIC's Vice Chairperson (as Chairperson of the SARC), the Director of the Division of Supervision (DOS) (the predecessor to the Division of Risk Management Supervision (RMS)), the Director of the Division of Compliance and Consumer Affairs (DCA) (the predecessor to the Division of Depositor and Consumer Protection (DCP)), the FDIC Ombudsman, and the General Counsel.[9] Consistent with the Riegle Act's mandate to create an intra-agency appeals process, membership in the SARC was limited to FDIC officials.[10] In order to ''establish[] a fair and credible review process,'' the SARC was comprised of senior officials at the FDIC, including the Directors of DOS and DCA, who were expected to ''bring to the Committee the necessary experience and judgment to make well-informed decisions concerning determinations under review.'' [11] The Guidelines were subsequently amended to add the Director of the Division of Insurance as a voting member of the SARC, and to provide formally that the Directors of DOS and DCA would not vote on cases brought before the SARC involving their respective divisions.[12]

In July 2004, the FDIC revised the Guidelines to change the structure and composition of the SARC to its current form. Specifically, the voting members of the SARC are now comprised of: One of the FDIC's three inside directors (who serves as the SARC Chairperson), and one deputy or special assistant to each of the other two inside directors.[13] The FDIC's General Counsel also serves as a non-voting member of the SARC. In the event of a vacancy, the Guidelines authorize the FDIC Chairperson to designate alternate member(s) to the SARC, so long as the alternate member was not directly or indirectly involved in making or affirming the material supervisory determination under review. These changes were intended to avoid the potential conflicts then faced by the Ombudsman and Division Directors,[14] and to ''further underscore the perception of the SARC as a fair and independent high-level body for review of material supervisory determinations within the FDIC.'' [15]

In July 2017, the FDIC further revised the Guidelines to provide an opportunity for IDIs to appeal certain material supervisory determinations

[1] 85 FR 54377 (Sep. 1, 2020).

[2] 12 U.S.C. 4806(a).

[3] 12 U.S.C. 4806(f)(2).

[4] 12 U.S.C. 4806(b).

[5] 12 U.S.C. 4806(f)(1)(A).

[6] 12 U.S.C. 4806(f)(1)(B).

[7] 12 U.S.C. 4806(g).

[8] 60 FR 15923 (Mar. 28, 1995).

[9] 60 FR 15923, 15930. Committee members could also designate another person to serve on their behalf.

[10] 60 FR 15923, 15924.

[11] 60 FR 15923, 15924.

[12] 69 FR 41479, 41480 (July 9, 2004).

[13] 69 FR 41479, 41480.

[14] 69 FR 41479, 41480–81. For example, the Ombudsman was excluded from the SARC in order to avoid any possible conflict between the Ombudsman's statutory role as a liaison between the agency and financial institutions on the one hand, and as a decision maker on the SARC on the other hand.

[15] 69 FR 41479, 41480.

underlying formal enforcement actions through the supervisory appeals process.[16] The Guidelines currently provide that if the FDIC does not commence a formal enforcement action within certain time frames after giving written notice to an IDI of a recommended or proposed formal enforcement action, the IDI may appeal the facts and circumstances underlying the formal enforcement action to the SARC.[17]

B. 2019 Listening Sessions on Supervisory Appeals and Dispute Resolution Process

In 2019, the FDIC decided to explore potential improvements to the supervisory appeals process. As part of this process, the FDIC's Office of the Ombudsman hosted a webinar and in-person listening sessions in each FDIC Region regarding the agency's supervisory appeals and dispute resolution processes. The sessions offered bankers and other interested persons an opportunity to provide individual input and recommendations regarding the supervisory appeals process.[18] Participants were encouraged to comment on various topics, including: Perceived barriers to, or concerns about, resolving disagreements; timeframes and procedures for pursuing reviews and appeals; and information publicly available on appeals and examination disagreements.

Among other topics, session participants offered suggestions on the composition of the SARC. In particular, participants focused on the composition of the SARC and opportunities to further enhance the independence of the appeals process. Relatedly, participants emphasized the importance of ensuring that SARC members have the subject matter expertise needed to decide supervisory appeals. Participants offered a range of suggestions on this topic, including adding an individual who is not otherwise affiliated with the FDIC to the SARC, such as a retired banking attorney or a former Federal or State bank regulator. Certain challenges were also discussed with respect to adding an individual who is not affiliated with the FDIC, such as ensuring the confidentiality of information and the avoidance of conflicts of interest.

Questions related to the timeframes for appeals and the types of matters that may be appealed if the FDIC pursues a formal enforcement action were also raised at a number of the listening sessions. Through these discussions, it appears that the procedures that apply when the FDIC has provided notice of a recommended or proposed formal enforcement action may be a source of confusion to bankers.

Participants also raised concerns about bankers' fear of retaliation by FDIC examiners, notwithstanding existing provisions in the Guidelines prohibiting such retaliation. This concern was cited as a basis for causing bankers to be reluctant to fully engage with the FDIC on material areas of disagreement. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution, and the FDIC continues to explore options to reaffirm its commitment to ensure compliance with this policy. In addition, while not specifically related to the supervisory appeals process, participants provided a variety of comments and recommendations on the examination process. Participants also shared views regarding the publicly available information on SARC decisions and ideas for improving the transparency of SARC decisions, such as publishing aggregate data on the outcomes of supervisory appeals.

C. Notice and Request for Comment

In August 2020, the FDIC published for comment a proposal to replace the SARC with an independent, standalone office within the FDIC, known as the Office of Supervisory Appeals (Office).[19] The Office would have delegated authority to consider and resolve appeals of material supervisory determinations. The Office would be fully independent of those FDIC Divisions with authority to issue material supervisory determinations and would be staffed by reviewing officials with bank supervisory or examination experience. Reviewing officials, as employees of the FDIC, would be cleared for conflicts of interest and subject to the FDIC's usual requirements for confidentiality.

Under the proposed Guidelines, an IDI would be encouraged to make a good-faith effort to resolve disagreements with its examiners and/or the appropriate Regional Office. If these efforts were not successful, the IDI would submit a request for review to the appropriate Division Director, who would have the option of issuing a written decision or sending the appeal directly to the Office. An IDI that disagrees with the decision made by the Division Director could submit an appeal to the Office.

If a material supervisory determination was appealed to the Office, a three-member panel of the Office would consider the appeal and issue a written decision. The Division Director and the Ombudsman would be permitted to submit views on the appeal to the panel. The Legal Division would provide counsel to the Office. Oral presentation to the panel would be permitted if a request was made by the institution or by FDIC staff.

The proposal provided that the panel would review an appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced, consistent with the existing standard of review for the SARC. The scope of the panel's review would be limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made, even if later discovered, and no consideration would be given to any facts or circumstances that occur or corrective action taken after the determination was made. The Office's role would not be to set policy, and the Office would not consider aspects of an appeal that sought to change or modify FDIC policy or rules.

Consistent with the existing Guidelines and the Riegle Act, the Office would not review decisions to appoint a conservator or receiver for an IDI. The FDIC proposed to further clarify that decisions made in furtherance of the resolution or receivership process or planning also would not be considered material supervisory determinations.

The FDIC also proposed amending the procedures for considering formal enforcement-related decisions through the supervisory appeals process. Specifically, the proposal clarified that, for purposes of the supervisory appeals process, a formal enforcement-related action commences—and appeal rights become unavailable—when the FDIC initiates a formal investigation, issues a notice of charges (or notice of assessment, as applicable), provides the IDI with a draft consent order, or otherwise provides written notice to the IDI that the FDIC is reviewing the relevant facts and circumstances to determine whether a formal enforcement action is merited. The FDIC would then have 120 days from the date

[16] 82 FR 34522, 34524 (July 25, 2017). The FDIC also noted that it provides an informal process through which institutions can obtain review by the relevant Division Director of matters that are not covered by the SARC process or another existing FDIC appeals or administrative process. *See* FIL–51–2016 (July 29, 2016).

[17] 82 FR 34522, 34526.

[18] *See* FIL–52–2019 (Sep. 24, 2019), *available at https://www.fdic.gov/news/financial-institution-letters/2019/fil19052.pdf.*

[19] 85 FR 54377 (Sep. 1, 2020).

on which notice was given to provide the IDI with a draft consent order. If the FDIC failed to provide a draft consent order within this 120-day period, the IDI's supervisory appeal rights would be made available.

Once the FDIC provides an IDI with a draft consent order, the parties would have an opportunity to negotiate the details of a potential settlement. The proposal did not include a fixed time limit on such negotiations. At any time, the IDI could notify the Division in writing that it believes further negotiation would not be productive, and the Division would then have 90 days to issue a notice of charges (or assessment) or to open an order of investigation. If the Division failed to issue such a notice or open an order of investigation within that time, the IDI would have 60 days to file an appeal of the material supervisory determination, consistent with the standard timeline following a material supervisory determination. If the IDI agrees to the consent order, then the matter would be resolved, and the need for an appeal would be obviated.

II. Final Guidelines and Discussion of Comments

The FDIC received fifteen comments from a variety of interested parties, including banks, trade associations, law firms, and a consultant. Commenters generally supported the proposal, with most asserting that the changes would enhance the supervisory appeals process. In particular, commenters supported the steps taken to promote the independence of the Office, suggesting that this would bolster the industry's confidence in the supervisory appeals process.

The FDIC's proposal solicited feedback on particular aspects of the supervisory appeals process. Comments on these matters and the FDIC's responses are summarized below.

Review of Office Decisions

The FDIC asked whether commenters believed that the Chairperson or the Board should have an opportunity to review Office decisions before issuance. While a few commenters asserted that the FDIC's senior management should review Office decisions, most commenters believed that review by the Chairperson or the Board would undermine the independence of the Office. In particular, two commenters suggested that review by the Chairperson or Board could deter banks from availing themselves of the process. A trade association also noted that if an appeal relates to an enforcement action, review of the appeal by the Board members could compromise the spirit of the Board's review of the administrative law judge's recommended decision.

Consistent with the proposal, the final Guidelines provide for review of material supervisory determinations by the Division Director and then by the Office. The FDIC proposed to establish the Office with authority to consider and resolve appeals of material supervisory determinations in order to promote independence. Additional levels of review also could delay the resolution of appeals, and the FDIC is mindful of the need to decide appeals expeditiously. For these reasons, the final Guidelines do not provide for additional levels of review beyond the Office.

Qualifications To Serve in the Office

The FDIC proposed staffing the Office with reviewing officials who have bank supervisory or examination experience, such as retired bank examiners. The FDIC asked whether bank supervisory or examination experience would constitute appropriate qualifications and experience for these positions. Commenters expressed a range of views on this topic. Some commenters supported staffing the Office with individuals with bank supervisory or examination experience. On the other hand, several trade associations, a bank, and a law firm stated that the Office should not be limited to staff with supervisory experience, and should also include retired bank officers, bank board members, consultants, or banking law attorneys. Some of these commenters suggested that each review panel include one or more members with industry experience.

The FDIC appreciates the perspective and expertise that bankers and other industry professionals could bring to the process. At the same time, the FDIC acknowledges that, because of the Office's role in making final decisions on appeals of material supervisory determinations on behalf of the agency, supervisory experience and training provides a firm foundation for exercising that responsibility and helps ensure a thorough understanding of the supervisory process. With this in mind, the FDIC will, as proposed, deem bank supervisory or examination experience as required background for panelists. However, the FDIC appreciates that industry perspective can be valuable and accordingly will generally view relevant industry experience favorably.

Staffing

A number of commenters made suggestions with respect to the staffing of the Office. A trade association recommended that reviewing officials serve staggered terms, with no official serving more than five years. Another trade association suggested that terms should not be renewable. Two commenters recommended that reviewing officials selected for the Office should not have been employed by the FDIC for at least the two years prior, thereby promoting separation between the Office and existing staff. The FDIC believes some of these recommendations will be beneficial to promoting the Office's independence, and will consider others carefully as it prepares to hire reviewing officials. Reviewing officials will be hired for terms, and only former, rather than current, government officials will be eligible to serve as reviewing officials.

Role of the Ombudsman

A few commenters recommended changes with respect to the Ombudsman's role in the process to promote the Office's independence. In particular, a bank encouraged the FDIC to include the Ombudsman as a non-voting member on the panel. The Ombudsman serves as a neutral liaison between the FDIC and institutions, as provided by section 309 of the Riegle Act.[20] The FDIC believes including the Ombudsman as a member of the panel could undermine this role, because as a member of the panel, the Ombudsman would be expected to serve in a decision-making capacity. In addition, institutions that might feel free to share confidential information with the Ombudsman in its role as liaison may be reluctant to do so if the Ombudsman would later be deciding a supervisory appeal.[21] In light of these concerns, and because the FDIC sees value in the Ombudsman's perspective, the final Guidelines allow the Ombudsman to submit views to the panel.

Administrative and Legal Support for the Office

Two commenters recommended resourcing the Office with independent administrative and legal support. The Office will share administrative support with the Legal Division, which also will provide counsel to the Office. To promote independence, legal staff that were involved in making the material

[20] *See* 12 U.S.C. 4806(d).

[21] The tension between the Ombudsman's statutory role and acting as a decision maker with respect to material supervisory determinations was among the reasons the FDIC removed the Ombudsman from the SARC when it was reconstituted in 2004. The FDIC also considered making the Ombudsman a non-voting member of the SARC, but concluded that also would not resolve this tension. *See* 69 FR 41479, 41481 (July 9, 2004).

supervisory determination that has been appealed will not advise the Office.

To provide further clarity, the Guidelines state that the Legal Division will provide counsel to the Office and generally advise on FDIC policies and rules. If an appeal seeks to change or modify FDIC policies or rules, or raises a policy matter of first impression, the Office will, with the Legal Division's concurrence, refer the matter to the Chairperson's Office. In addition, the Legal Division will review decisions of the Office for consistency with applicable laws, regulations, and policies of the FDIC prior to their issuance. If the Legal Division determines that an Office decision is contrary to a law, regulation, or FDIC policy, the Office will be required to revise the decision to conform with relevant laws, regulations, or policies. The Legal Division will not exercise supervisory judgment or opine on the merits of an appeal.

Retaliation Concerns

A trade association stated that the FDIC should take measures to ensure that reviewing officials are not retaliated against for their decisions. The FDIC has structured the Office to minimize the risk that a fear of retaliation could impact decisions by reviewing officials. Reviewing officials will be hired for terms, and only former, rather than current, government officials will be eligible to serve as reviewing officials. Additionally, all decisions related to which reviewing officials will serve on which panels will be decided by the Office, and not by any FDIC officials outside of the Office.

The FDIC also received comments reiterating that some IDIs may not appeal decisions due to a fear of retaliation from examiners. As noted in the proposal, FDIC policy currently prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution, and the FDIC continues to explore options to reaffirm its commitment to and ensure compliance with this policy.

Standard of Review

Like the current standard of review, under the proposed Guidelines, the Division Director and the Office would review appeals for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. Two trade associations encouraged the FDIC to adopt a *de novo* standard of review, and align the standard with the approach recently taken by the Federal Reserve Board (FRB).

The FDIC agrees that a change in the standard of review for appeals to the Division Director would be appropriate. The final Guidelines therefore provide that the Division Director will make his or her own supervisory determination, which is substantially similar to the standard adopted by the initial review panel under the FRB's approach.[22] Under this standard, the Division Director would have discretion to consider examination workpapers and other materials developed by staff during an examination, but would make an independent supervisory determination, without deferring to the judgments of either party. The final guidelines do not, however, alter the standard of review when the appeal is reviewed by the Office. Consistent with the proposal, the Office would review appeals for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced.

Ex Parte Communications

A law firm and two trade associations recommended that the FDIC prohibit *ex parte* communications between supervisory staff and the Office during an appeal, asserting that this is a due process and fairness concern. The FDIC understands this concern and is addressing it in the final Guidelines by requiring that communications between the Office and either supervisory staff or the appealing institution, including materials submitted to the Office for review, are also shared with the other party to the appeal, subject to limitations on disclosure.

Review Panel Size

The FDIC proposed that each appeal would be heard by a panel of three reviewing officials, and asked whether three reviewers per panel would be an appropriate number, or whether there were some situations where more or fewer panelists might be appropriate. A number of commenters suggested panels comprised of five reviewing officials. In particular, a trade association asserted that this number is common across governmental bodies, affords increased diversity in perspectives and expertise, and decreases the likelihood of deference to the strong opinions of one panel member. Other commenters suggested expanding the size of panels to five members in order to accommodate the addition of staff with industry experience. Two commenters, including a trade association and a consultant, suggested expanding the size of review panels in case a review official becomes ill or must be recused. A law firm suggested that relatively minor matters (*e.g.,* examination ratings, loan loss reserve provisions, loan classifications) should be handled by a panel of three members, while more serious matters (*e.g.,* violations of law or regulation, applications, decisions to initiate informal enforcement actions, matters requiring Board attention) should be handled by five-member panels.

The FDIC agrees that five-member panels could be beneficial in some situations. To provide the Office with flexibility, the final Guidelines provide that panels may be comprised of either three or five reviewing officials. When an appeal is submitted to the Office, a panel of either three or five reviewing officials will be assigned to consider the matter. The FDIC believes that initial experiences administering this new process may help to determine the most appropriate size for panels going forward.

Other Levels of Review

The FDIC proposed that an IDI would be able to appeal the Division Director's decision to the Office, and that no appeal of the Office's decision would be permissible. The FDIC asked commenters whether the appellate process should have any additional level(s) of review before or after the Office.

Commenters generally stated that the process should not include an additional level of review before an appeal to the Office. In particular, a trade association asserted that the FDIC should remove barriers for institutions wishing to appeal material supervisory determinations, including layers of review. However, a few commenters recommended an additional level of review following a decision by the Office. A law firm suggested allowing Office decisions to be appealed to the individuals that currently serve on the SARC, and a trade association suggested that either the Board or the institution could request reconsideration of Office decisions within 30 days of issuance. A bank holding company also recommended that institutions have the option to bring matters to an administrative law judge as an alternative to review by the Office.

The final Guidelines do not include any additional levels of review. It is not clear that review by the individuals currently comprising the current SARC would be beneficial because replacing the SARC with the Office was intended

[22] *See* 85 FR 15175, 15180 (Mar. 17, 2020).

to promote independence, and commenters generally supported that aspect of the proposal. The final Guidelines balance the statutory objectives of independent review and timely resolution of appeals by allowing the Office's decision to serve as the final review.[23] Proceedings before an administrative law judge serve a different purpose and are governed by different procedural standards, and therefore may not be well-suited for appeals of material supervisory determinations. For example, proceedings before administrative law judges typically involve motion practice, discovery, and oral hearings. The supervisory appeals process, by contrast, is intended to resolve disagreements in a more informal and expeditious manner. For these reasons, the FDIC concludes that the appeals process should not provide for review by an administrative law judge as an alternative to review by the Office.

Timelines for Appeals

The FDIC asked whether the proposed timelines properly balance the goals of resolving appeals as expeditiously as possible and providing adequate time for preparation and review. Under the Guidelines, an institution would have 60 calendar days in which to file a request for review with the Division Director. Within 45 calendar days after receiving that request, the Division Director would either review the appeal and issue a written determination or refer the request for review to the Office for consideration. Upon receiving the Division Director's decision, an IDI would have 30 calendar days to file an appeal with the Office. Within 90 calendar days after receiving the appeal (including 30 days for the Ombudsman and the Division Director to submit views), the Office would meet to adjudicate the appeal, and would notify the institution of its decision within 45 calendar days after that meeting.

While several commenters stated that these timeframes were reasonable, others encouraged the FDIC to consider changes to expedite the process. A law firm asserted that unless a particularly serious matter is involved, the appeals process should be completed within 180 days of the examination exit meeting, rather than within 270 days as the proposal would allow. A bank holding company stated that the Office should issue decisions within 60 days of receiving appeals. A few commenters recommended allowing institutions to petition the Office for expedited review of supervisory determinations in certain circumstances. In addition, two trade associations suggested allowing extensions of the time frames in the appeals process. Another commenter suggested that the FDIC clarify that whenever a deadline falls on a weekend or federal holiday, the deadline should move to the next business day.

The FDIC believes that, in general, the proposed timeframes appropriately balance the interest in resolving appeals expeditiously with the need for adequate preparation and review. The FDIC expects that the process will move more quickly in straightforward cases that do not involve complex issues or review of extensive documents. Additionally, certain circumstances may warrant expedited consideration of an appeal, and the FDIC agrees that the process should permit institutions to petition for expedited review. Under section G.2 of the final Guidelines, an institution may request expedited review in its appeal to the Office.

The FDIC expects that extensions will generally be unnecessary, but believes that it is reasonable to permit institutions to request extensions under appropriate circumstances. This is consistent with both the spirit of the process and current FDIC practice. Accordingly, the final Guidelines provide that an institution may request an extension of the time period to submit an appeal. Such requests may be directed to the appropriate Division Director with respect to the first stage of the appeal, and to the Office with respect to the second stage. Finally, the FDIC agrees that the suggested clarification with respect to deadlines that fall on a weekend or federal holiday would be helpful, and has adopted it in the final Guidelines.

Publicly Available Information on the Process

The FDIC proposed publishing decisions of the Office as soon as practicable and with redactions to avoid disclosure of the name of the appealing institution and other information exempt from disclosure under the Freedom of Information Act. For cases in which redaction is deemed insufficient to prevent improper disclosure, the FDIC proposed publishing decision summaries. The FDIC also proposed that published Office decisions could be cited as precedent in Office appeals. Finally, the FDIC proposed publishing annual reports on decisions issued by Division Directors. These proposals are consistent with the FDIC's current policies regarding decisions issued by Division Directors and the SARC. The FDIC asked commenters what other information should be published about the appeals process or specific decisions while still maintaining confidentiality.

Several commenters agreed that the information published about the supervisory appeals process was sufficient, and agreed that the FDIC should continue to ensure that confidentiality is preserved. One commenter encouraged the FDIC to publish a chart online listing the outcome of appeals along with a short summary of the case. The FDIC agrees that the transparency of the appeals process could be enhanced by providing summary statistics on the outcomes of appeals. The final Guidelines therefore provide for the publication of such information.

Authorization To Submit an Appeal

Two trade associations requested that an institution's senior management should be permitted to authorize supervisory appeals. The FDIC has adopted this suggestion in the final Guidelines. If an institution's senior management files an appeal, it must inform the board of directors of the substance of the appeal before filing and keep the board of directors informed of the appeal's status.

Formal Enforcement-Related Changes

The FDIC proposed a timeline that would apply to supervisory appeals in instances in which the FDIC is also evaluating whether a formal enforcement action is merited. In any case where the FDIC has provided notice to an IDI that it is determining whether a formal enforcement action is merited based on an examination, the FDIC would have 120 days to issue an order of investigation, a notice of charges (or notice of assessment, as applicable), or provide the institution with a draft consent order. If the FDIC fails to do so within the 120-day timeframe, the IDI's supervisory appeal rights would be made available. However, if the FDIC provides an IDI with a draft consent order, the parties would have an opportunity to negotiate the details of a potential settlement without a fixed time limit. At any time, if the IDI believes that further negotiations would not be productive, it could notify the Division of its decision in writing, at which point the Division would have 90 days to issue a notice of charges (or assessment) or to open an order of investigation. If the Division failed to produce a notice of charges (or

[23] Two commenters, including a bank and a trade association, requested that the FDIC make clear that Office decisions are subject to further review by the federal courts. The FDIC has noted in the past that because supervisory decisions are entrusted to agency discretion, they cannot be appealed to the courts.

assessment) or to open an order of investigation within those 90 days, the IDI's supervisory appeal rights to the Office would be made available. The IDI would have 60 days to file an appeal, consistent with the standard timeline following a material supervisory determination.

The FDIC proposed that these time periods could be extended with the approval of the Chairperson's Office, or with the mutual agreement of both parties. The FDIC asked commenters whether this timeline would be too restrictive for some cases, and whether commenters expect to invoke the provision(s) allowing for an extension. Several commenters stated that the proposed timeframe was appropriate. A bank suggested that instead of the proposed extension provisions, the process should permit both the FDIC and the institution to request a one-time extension of a deadline for 30 days. The FDIC believes that limiting the parties to a one-time 30-day extension could hinder the parties' efforts to settle an enforcement action, and is therefore finalizing these provisions as proposed.

Transition Period

The FDIC expects that a period of time will be necessary to establish and staff the Office. The current Guidelines, which permit appeals of Division Directors' decisions to the SARC, will apply until the Office is fully operational. The FDIC will publish a notice to inform institutions when this occurs.

For the reasons set out in the preamble, the Federal Deposit Insurance Corporation's Board of Directors adopts the Guidelines for Appeals of Material Supervisory Determinations as set forth below.

Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (Riegle Act) required the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (Guidelines) describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these Guidelines establish an appeals process for the review of material supervisory determinations by the Office of Supervisory Appeals (Office).

B. Reviewing Officials

The Office will be staffed with reviewing officials who have bank supervisory or examination experience. Reviewing officials will be hired for terms, and only former, rather than current, government officials will be eligible to serve as reviewing officials. Reviewing officials will consider and decide appeals submitted to the Office. Each appeal will be reviewed and decided by a panel of either three or five reviewing officials who have no conflicts of interest with respect to the appeal or the parties to the appeal. All decisions related to which reviewing officials will serve on which panels will be decided by the Office.

C. Institutions Eligible To Appeal

The Guidelines apply to the insured depository institutions that the FDIC supervises (*i.e.,* insured State nonmember banks, insured branches of foreign banks, and state savings associations), and to other insured depository institutions for which the FDIC makes material supervisory determinations.

D. Determinations Subject to Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these Guidelines.

(1) Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) IT ratings under the Uniform Rating System for Information Technology;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the appropriateness of loan loss reserve provisions;

(j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;

(k) Determinations relating to violations of a statute or regulation that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending Act (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR 303.11(f), for which a request for reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829 (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Depositor and Consumer Protection (DCP) or the Division of Risk Management Supervision (RMS);

(n) Decisions to initiate informal enforcement actions (such as memoranda of understanding);

(o) Determinations regarding the institution's level of compliance with a formal enforcement action; however, if the FDIC determines that the lack of compliance with an existing formal enforcement action requires an additional formal enforcement action, the proposed new enforcement action is not appealable;

(p) Matters requiring board attention; and

(q) Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or that otherwise affects the nature and level of supervisory oversight accorded an institution.

(2) Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution, and other decisions made in furtherance of the resolution or receivership process, including but not limited to determinations pursuant to parts 370, 371, and 381, and § 360.10 of the FDIC's rules and regulations;

(b) Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C. 1831*o;*

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations); and

(d) Formal enforcement-related actions and decisions, including determinations and the underlying facts

and circumstances that form the basis of a recommended or pending formal enforcement action.

(3) A formal enforcement-related action or decision commences, and becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) (Order of Investigation), issues a notice of charges or a notice of assessment under 12 U.S.C. 1818 or other applicable laws (Notice of Charges), provides the institution with a draft consent order, or otherwise provides written notice to the institution that the FDIC is reviewing the facts and circumstances presented to determine if a formal enforcement action is merited under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (ECOA) or a notice to the Secretary of Housing and Urban Development (HUD) for violations of ECOA or the Fair Housing Act (FHA). Such notice may be provided in the transmittal letter accompanying a Report of Examination. For the purposes of these Guidelines, remarks in a Report of Examination do not constitute written notice that the FDIC is reviewing the facts and circumstances presented to determine if a proposed enforcement action is merited. Commencement of a formal enforcement-related action or decision will not suspend or otherwise affect a pending request for review or appeal that was submitted before the commencement of the formal enforcement-related action or decision.

(4) Additional Appeal Rights:

(a) In the case of any written notice from the FDIC to the institution that the FDIC is determining whether a formal enforcement action is merited, the FDIC must issue an Order of Investigation, issue a Notice of Charges, or provide the institution with a draft consent order within 120 days of such a notice, or appeal rights will be made available pursuant to these Guidelines. If the FDIC timely provides the institution with a draft consent order and the institution rejects the draft consent order in writing, the FDIC must issue an Order of Investigation or a Notice of Charges within 90 days from the date on which the institution rejects the draft consent order in writing or appeal rights will be made available pursuant to these Guidelines. The FDIC may extend these periods, with the approval of the Chairperson's Office, after the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

(b) In the case of a referral to the Attorney General for violations of the ECOA, beginning on the date the referral is returned to the FDIC, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

(c) In the case of providing notice to HUD for violations of the ECOA or the FHA, beginning on the date the notice is provided, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

(d) Written notification will be provided to the institution within 10 days of a determination that appeal rights have been made available under this section.

(e) The relevant FDIC Division and the institution may mutually agree to extend the timeframes in paragraphs (a), (b), and (c) if the parties deem it appropriate.

E. Good-Faith Resolution

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the appropriate Division, either DCP, RMS, or the Division of Complex Institution Supervision and Resolution (CISR), or to filing a subsequent appeal with the Office under these Guidelines.

F. Filing a Request for Review with the Appropriate Division

(1) An institution may file a request for review of a material supervisory determination with the Division that made the determination, either the Director, DCP, the Director, RMS, or the Director, CISR (Director or Division Director), 550 17th Street, NW, Room F–4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors or senior management has considered the merits of the request and has authorized that it be filed. Senior management is defined as the core group of individuals directly accountable to the board of directors for the sound and prudent day-to-day management of the institution. If an institution's senior management files an appeal, it must inform the board of directors of the substance of the appeal before filing and keep the board of directors informed of the appeal's status.

(2) Within 45 calendar days after receiving a request for review described in paragraph (1), the Division Director will:

(a) Review the appeal, considering whether the material supervisory determination is consistent with applicable laws, regulations, and policy, make his or her own supervisory determination without deferring to the judgments of either party, and issue a written determination on the request for review, setting forth the grounds for that determination; or

(b) refer the request for review to the Office for consideration as an appeal under Section G and provide written notice to the institution that the request for review has been referred to the Office.

(3) No appeal to the Office will be allowed unless an institution has first filed a timely request for review with the appropriate Division Director.

(4) In any decision issued pursuant to paragraph (2)(a) of this section, the Director will inform the institution of the 30-day time period for filing with the Office and will provide the mailing address for any appeal the institution may wish to file.

(5) The Division Director may request guidance from the Office or the Legal Division as to procedural or other questions relating to any request for review.

G. Appeal to the Office

An institution that does not agree with the written determination rendered by the Division Director may appeal that

determination to the Office within 30 calendar days after the date of receipt of that determination. Failure to file within the 30-day time limit may result in denial of the appeal by the Office.

1. Filing with the Office

An appeal to the Office will be considered filed if the written appeal is received by the FDIC within 30 calendar days after the date of receipt of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. The appeal should be sent to the address indicated on the Division Director's determination being appealed, or sent via email to *ESS_Appeals@fdic.gov.* Upon receiving the appeal, the Office will send an acknowledgment to the institution, and will send copies of the institution's appeal to the Office of the Ombudsman and the appropriate Division Director.

2. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the Office and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. If expedited review is requested, the appeal should state the reason for the request. Only matters submitted to the appropriate Division Director in a request for review may be appealed to the Office. Evidence not presented for review to the Division Director is generally not permitted; such evidence may be submitted to the Office only if approved by the reviewing panel and with a reasonable time for the Division Director to review and respond. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in the Office administrative process shall create any discovery or other such rights.

3. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

4. Submissions from the Ombudsman and the Division Director

The Ombudsman and the Division Director each may submit views regarding the appeal to the Office within 30 calendar days of the date on which the appeal is received by the Office.

5. Oral Presentation

The Office will, if a request is made by the institution or by FDIC staff, allow an oral presentation. The Office may hear oral presentations in person, telephonically, electronically, or through other means agreed upon by the parties. If an oral presentation is held, the institution and FDIC staff will be allowed to present their positions on the issues raised in the appeal and to respond to any questions from the Office.

6. Consolidation, Dismissal, and Rejection

Appeals based upon similar facts and circumstances may be consolidated for expediency. An appeal may be dismissed by the Office if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. The Office will decline to consider an appeal if the institution's right to appeal is not yet available under Section D(4), above.

7. Scope of Review and Decision

The Office will be an appellate body and will make independent supervisory determinations. The Office will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The Office's review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The Office will not consider any aspect of an appeal that seeks to change or modify existing FDIC rules or policy. The Office will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days after the date the Office meets to consider the appeal, which meeting will be held within 90 days after either the date of the filing of the appeal or the date that the Division Director refers the appeal to the Office.

8. Role of the Legal Division

The Legal Division will provide counsel to the Office and generally advise the Office on FDIC policies and rules. If an appeal seeks to change or modify FDIC policies or rules, or raises a policy matter of first impression, the Office will, with the Legal Division's concurrence, refer the matter to the Chairperson's Office.

The Legal Division also will review decisions of the Office for consistency with applicable laws, regulations, and policies of the FDIC prior to their issuance. If the Legal Division determines that a decision is contrary to a law, regulation, or policy of the FDIC, the Office will revise the decision to conform with relevant laws, regulations, or policies.

9. Other Communications

Any communications between the Office and either supervisory staff or the appealing institution will be shared with the other party to the appeal, subject to limitations on disclosure.

H. Publication of Decisions

Decisions of the Office will be published as soon as practicable, and the published decisions will be redacted to avoid disclosure of the name of the appealing institution and any information exempt from disclosure under the Freedom of Information Act and the FDIC's document disclosure regulations found in 12 CFR 309. In cases in which redaction is deemed insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published Office decisions may be cited as precedent in appeals to the Office. Annual reports on the Office's decisions and Division Directors' decisions with respect to institutions' requests for review of material supervisory determinations also will be published.

I. Appeal Guidelines Generally

Appeals to the Office will be governed by these Guidelines. The Office, with the concurrence of the Legal Division, will retain discretion to waive any provision of the Guidelines for good cause. Supplemental rules governing the Office's operations may be adopted.

Institutions may request extensions of the time period for submitting appeals under these Guidelines from either the appropriate Division Director or the Office, as appropriate. If a filing under these Guidelines is due on a Saturday, Sunday, or a Federal holiday, the filing may be made on the next business day.

J. Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the Office has been filed, or a final Office decision issued, is not eligible for consideration by the Ombudsman. However, pursuant to Section (G)(4) of these Guidelines, the Ombudsman may submit views to the Office for its consideration in connection with any pending appeal.

K. Coordination with State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP, the Director, RMS, or the Director, CISR, as appropriate, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the Office, the Office will notify the institution and the State regulatory authority of its decision. Once the Office has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

L. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress during the appeal or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

M. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

N. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 3501 Fairfax Drive, Suite E–2022, Arlington, Virginia, 22226, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on January 19, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–01547 Filed 1–22–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, January 28, 2021 at 10:00 a.m.

PLACE: Virtual meeting. Note: Because of the covid–19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. to access the virtual meeting, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2020–06: Escobar

Audit Division Recommendation Memorandum on the Mississippi Republican Party (A17–15)

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021–01594 Filed 1–21–21; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL TRADE COMMISSION

[File No. 192 3172]

Everalbum, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 24, 2021.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Everalbum, Inc.; File No. 192 3172'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: James Trilling (202–326–3497), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at *https://www.ftc.gov/news-events/commission-actions*.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 24, 2021. Write ''Everalbum, Inc.; File No. 192 3172'' on your comment. Your comment—including your name and your state—

will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Everalbum, Inc.; File No. 192 3172'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 24, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy*.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'' or ''FTC'') has accepted, subject to final approval, an agreement containing a consent order from Everalbum, Inc., also doing business as Ever and Paravision (''Everalbum'' or ''Respondent''). The proposed consent order (''proposed order'') has been placed on the public record for thirty (30) days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission again will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Since 2015, Everalbum has operated ''Ever,'' a photo storage and organization application available as an iOS or Android mobile application (''app'') and in web and desktop formats. Ever allows consumers to upload photos and videos (collectively, ''content'') from mobile devices, computers, or social media or cloud-based storage service accounts to Ever's cloud servers. In February 2017, Everalbum launched a new feature of the Ever mobile app, called ''Friends.'' The Friends feature uses face recognition to organize users' photos by faces of the people who appear in them. When Everalbum launched the Friends feature, it enabled face recognition by default for all users of the Ever mobile app.

Everalbum's application of face recognition to Ever app users' content has not been limited to providing the Friends feature. The Commission's proposed complaint alleges that, in four instances, Everalbum used images it extracted from Ever users' photos in the development of face recognition technology. In one such instance, Everalbum used the resulting face recognition technology both in the Ever app and to build the face recognition services offered by its enterprise brand, Paravision (formerly Ever AI).

The proposed two-count complaint alleges that Everalbum violated Section 5(a) of the FTC Act by misrepresenting the company's practices with respect to Ever users' content.

Proposed complaint Count I alleges that Everalbum misrepresented the circumstances under which the company would apply face recognition to Ever users' content. According to the proposed complaint, Everalbum published a help article entitled ''What is Face Recognition?'' on its website in July 2018. The proposed complaint alleges that the help article represented that the Ever app's ''Friends'' feature was not active—and, therefore, that Everalbum would not apply face recognition technology to users' content—unless users affirmatively enabled the feature. The proposed complaint further alleges that the help article was false or misleading, because, until April 2019, for users in most geographic locations, Everalbum applied face recognition to users' content by default and users could not use an app setting to turn off face recognition.

Proposed complaint Count II alleges that Everalbum misrepresented that the company would delete the content of Ever users who chose to deactivate their Ever accounts. According to the proposed complaint, when Ever users sought to deactivate their accounts, Everalbum presented them with pop-up messages that represented that account deactivation would result in Everalbum deleting their content. The proposed complaint alleges that Everalbum also made a similar representation in response to consumer inquiries and in its privacy policy. Despite its representations, Everalbum allegedly did not delete any users' content upon account deactivation and instead stored the content indefinitely.

The proposed order contains provisions to address Respondent's conduct and prevent it from engaging in the same or similar acts or practices in

the future. Provision I of the proposed order prohibits Respondent from making misrepresentations related to the collection, use, disclosure, maintenance, or deletion of Covered Information (as defined in the order); consumers' ability to control any of these actions; the extent to which Everalbum accesses or permits access to Covered Information; the extent, purpose, and duration of Everalbum's retention of Covered Information after consumers deactivate their accounts; or the extent to which Everalbum otherwise protects the privacy, security, availability, confidentiality, or integrity of any Covered Information.

Part II of the proposed order requires Respondent to clearly and conspicuously disclose, and obtain consumers' affirmative express consent for, all purposes for which it will use or share User's Biometric Information before using the information to create data needed for face recognition analysis or to develop face recognition models or algorithms.

Part III of the proposed order requires Respondent to delete (A) photos and videos of Ever app Users who requested deactivation of their accounts, (B) face recognition data that it created without obtaining Users' affirmative express consent, and (C) models and algorithms it developed in whole or in part using images from Users' photos.

Parts IV through VII of the proposed order are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondent to provide information or documents necessary for the Commission to monitor compliance. Part VIII of the proposed order states that the order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

Statement of Commissioner Rohit Chopra in the Matter of Everalbum, Inc.

Today's facial recognition technology is fundamentally flawed and reinforces harmful biases. I support efforts to enact moratoria or otherwise severely restrict its use. Until such time, it is critical that the FTC meaningfully enforce existing law to deprive wrongdoers of technologies they build through unlawful collection of Americans' facial images and likenesses.

The case of Everalbum is a troubling illustration of just some of the problems with facial recognition. Everalbum operates a business line called Paravision, which developed and marketed facial recognition technology, including to clients in the security and air travel industries.[1] The company enhanced their facial recognition technology by allegedly baiting consumers into using Ever, a ''free'' app that allowed users to store and modify photos.[2]

As outlined in the complaint, Everalbum made promises that users could choose not to have facial recognition technology applied to their images, and that users could delete the images and their account. In addition to those promises, Everalbum had clear evidence that many of the photo app's users did not want to be roped into facial recognition. The company broke its promises, which constitutes illegal deception according to the FTC's complaint. This matter and the FTC's proposed resolution are noteworthy for several reasons.

First, the FTC's proposed order requires Everalbum to forfeit the fruits of its deception. Specifically, the company must delete the facial recognition technologies enhanced by any improperly obtained photos. Commissioners have previously voted to allow data protection law violators to retain algorithms and technologies that derive much of their value from ill-gotten data.[3] This is an important course correction.

Second, the settlement does not require the defendant to pay any penalty. This is unfortunate. To avoid this in the future, the FTC needs to take further steps to trigger penalties, damages, and other relief for facial recognition and data protection abuses. Commissioners have voted to enter into scores of settlements that address deceptive practices regarding the collection, use, and sharing of personal data. There does not appear to be any meaningful dispute that these practices are illegal. However, since Commissioners have not restated this precedent into a rule under Section 18 of the FTC Act, we are unable to seek penalties and other relief for even the most egregious offenses when we first discover them.[4]

Finally, the Everalbum matter makes it clear why it is important to maintain states' authority to protect personal data. Because the people of Illinois, Washington, and Texas passed laws related to facial recognition and biometric identifiers, Everalbum took greater care when it came to individuals in these states.[5] The company's deception targeted Americans who live in states with no specific state law protections.

With the tsunami of data being collected on individuals, we need all hands on deck to keep these companies in check. State and local governments have rightfully taken steps to enact bans, moratoria, and other restrictions on the use of these technologies. While special interests are actively lobbying for federal legislation to delete state data protection laws, it will be important for Congress to resist these efforts. Broad federal preemption would severely undercut this multi-front approach and leave more consumers less protected.

It will be critical for the Commission, the states, and regulators around the globe to pursue additional enforcement actions to hold accountable providers of facial recognition technology who make

[1] Paravision, *https://www.paravision.ai/* (last visited on Jan. 4, 2020).

[2] Compl., In the Matter of Everalbum, Inc., Comm'n File No. 1923172. This is not the only photo-sharing application that has drawn scrutiny for its ties to facial recognition and surveillance technology. Kashmir Hill & Aaron Krolik, *How Photos of Your Kids Are Powering Surveillance Technology,* N.Y. Times (Oct. 11, 2019), *https://www.nytimes.com/interactive/2019/10/11/technology/flickr-facial-recognition.html.*

[3] The Commission voted 3–2 on a settlement with Google and YouTube that allowed the companies to retain algorithms and other technologies enhanced by illegally obtained data on children. Based on my analysis, the Commission also allowed Google and YouTube to profit from their conduct, even after paying a civil penalty. *See* Dissenting Statement of Commissioner Rohit Chopra In the Matter of Google LLC and YouTube, LLC, Comm'n File No. 1723083 (Sep. 4, 2019), *https://www.ftc.gov/public-statements/2019/09/statement-commissioner-rohit-chopra-regarding-youtube.* The Commission voted 3–2 on a settlement with Facebook to address unlawful facial recognition practices that violated a 2012 Commission order. Like the Google/YouTube settlement, Facebook was not required to forfeit any facial recognition or other related technologies. The settlement also provided an unusual immunity clause for senior executives, including Mark Zuckerberg and Sheryl Sandberg. *See also* Dissenting Statement of Commissioner Rohit Chopra In re Facebook, Inc., Comm'n File No. 1823109 (Jul. 24, 2019), *https://www.ftc.gov/public-statements/2019/07/dissenting-statement-commissioner-rohit-chopra-regarding-matter-facebook.*

[4] Statement of Commissioner Rohit Chopra Regarding the Report to Congress on Protecting Older Adults, Comm'n File No. P144400 (Oct. 19, 2020), *https://www.ftc.gov/public-statements/2020/10/statement-commissioner-rohit-chopra-regarding-report-congress-protecting*; Rohit Chopra & Samuel A.A. Levine, The Case for Resurrecting the FTC Act's Penalty Offense Authority (Oct. 29, 2020), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256.*

[5] Compl., *supra* note 2.

false accuracy claims and engage in unfair, discriminatory conduct.[6]

[FR Doc. 2021–01430 Filed 1–22–21; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee.

Date: February 18–19, 2021.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 666, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Latarsha J. Carithers, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 666, Bethesda, MD 20892, 301–594–4859, *latarsha.carithers@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 19, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01486 Filed 1–22–21; 8:45 am]

BILLING CODE 4140–01–P

[6] Prepared Remarks of Commissioner Rohit Chopra at Asia Pacific Privacy Authorities 54th APPA Forum (Dec. 7, 2020), *https://www.ftc.gov/public-statements/2020/12/prepared-remarks-commissioner-rohit-chopra-asia-pacific-privacy.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Carol A. Salata at 240–627–3727; *csalata@niaid.nih.gov*. Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows:

Prefusion-Stabilized Fusion (F) Glycoprotein Vaccine Immunogens for Human Metapneumovirus

Description of Technology: Human metapneumovirus (hMPV) infections have been shown as a common cause of upper and lower respiratory diseases such as bronchiolitis and pneumonia in young children, the elderly, and other immunocompromised individuals. Studies show that infections by the non-segmented negative strand RNA virus begin with attachment and entry of viral glycoproteins that mediate fusion with host cellular membranes. Like for the human respiratory syncytial virus (hRSV), a viral entry is initiated by the fusion (F) protein. Given its role in hMPV entry, the F protein has thus been a target for eliciting neutralizing antibodies and development of novel protein-based therapeutic vaccines.

Researchers at the Vaccine Research Center (VRC) of the National Institute of Allergy and Infectious Diseases (NIAID) developed improved recombinant human metapneumovirus (hMPV) F proteins stabilized in the prefusion conformation that can elicit potent neutralizing antibodies against infection. Double and triple stabilized candidates were designed with inter- and intraprotomer disulfide mutations that increase protein production and show improved antigenic recognition by prefusion-specific antibodies. These second-generation immunogens constitute an improvement over the first generation constructs and are characterized by additional stabilization that results in optimal neutralization responses.

The second-generation stabilized prefusion hMPV F immunogens may be an ideal vaccine immunogen to elicit broad potent neutralizing antibodies against metapneumovirus infection, particularly in children and immunocompromised adults.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

Potential Commercial Applications:

- A promising vaccine immunogen to elicit broad potent neutralizing antibodies against metapneumovirus infection, particularly in children and immunocompromised adults.

Competitive Advantages:

- There are no approved vaccines or therapeutics against the second leading cause of pediatric viral lower respiratory tract infection in infants and young children.
- Second-generation hMPV F immunogens induce higher titer neutralizing responses than first-generation versions in mice.

Development Stage: Preclinical Research.

Inventors: Peter D. Kwong (NIAID); Guillaume Stewart-Jones (NIAID); John R. Mascola (NIAID); Ursula J. Buchholz (NIAID); Peter L. Collins (NIAID); Jason Gorman (NIAID); Li Ou,(NIAID); Tongquing Zhou (NIAID); Baoshan Zhang (NIAID); Wing-Pui Kong (NIAID); Yaroslav Tsybovsky (NCI).

Publications: Liu, P., et al (2013). A live attenuated human metapneumovirus vaccine strain provides complete protection against homologous viral infection and cross-protection against heterologous viral infection in BALB/c mice. *Clinical and Vaccine Immunology, 20*(8), 1246–1254.

Battles, M.B., *et al,* (2017). Structure and immunogenicity of pre-fusion-stabilized human metapneumovirus F glycoprotein. *Nature communications, 8*(1), 1–11.

Intellectual Property: HHS Reference Number E–131–2019 includes U.S. Provisional Patent Application Number 63/017,581, filed on 04/29/2020.

Licensing Contact: To license this technology, please contact Carol A. Salata at 240–627–3727; *csalata@niaid.nih.gov*.

Dated: January 8, 2021.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2021–01490 Filed 1–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of Cell Therapies for Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to Ziopharm Oncology, Inc. (''Ziopharm''), headquartered in Boston, MA.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before February 9, 2021 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Andrew Burke, Ph.D., Senior Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240) 276–5484; Email: *andy.burke@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

Group B

E–173–2020: T Cell Receptors Recognizing R273C or Y220C Mutation in P53

1. U.S. Provisional Patent Application 63/074,747, filed September 4, 2020 (E–173–2020–0–US–01).

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the fields of use may be limited to the following:

Fields of Use Applying to Intellectual Property Group B

''Development, manufacture and commercialization of autologous, peripheral blood T cell therapy products engineered by transposon-mediated gene transfer to express T cell receptors reactive to mutated P53, as claimed in the Licensed Patent Rights, for the treatment of human cancers. Specifically excluded from this field of use are CRISPR-engineered peripheral blood T cell therapy products for the treatment of human cancers.

Development, manufacture and commercialization of companion diagnostics approved or cleared by the FDA or equivalent foreign regulatory agency for Licensee-proprietary T cell therapy products.''

Intellectual Property Group B is primarily directed to isolated TCRs reactive to mutated tumor protein 53 (TP53 or P53), within the context of several HLAs. *P53* is the archetypal tumor suppressor gene and the most frequently mutated gene in cancer. Contemporary estimates suggest that >50% of all tumors carry mutations in *P53.* Because of its prevalence in cancer and its restricted expression to precancerous and cancerous cells, this antigen may be targeted on mutant P53-expressing tumors with minimal normal tissue toxicity.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 14, 2021.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2021–01487 Filed 1–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of Certain Fusion Proteins and Their Use for the Treatment of Humans With Short Stature

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The *Eunice Kennedy Shriver* National Institute of Child Health and Human Development and the National Cancer Institute, both institutes of the National Institutes of Health, Department of Health and Human Services, are contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to EpifiZa Inc. of Montreal, QC (Canada).

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before February 9, 2021 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Richard T. Girards, Jr., Esq., MBA, Senior Technology Transfer Manager, National Institutes of Health, NCI Technology Transfer Center by email (*richard.girards@nih.gov)* or phone (240–276–6825).

SUPPLEMENTARY INFORMATION:

Intellectual Property

E–003–2014: Agents That Specifically Bind Matrilin–3 and Their Use/Cartilage Targeting Agents and Their Use

1. United States Provisional Patent Application No. 61/927,904, filed 15 January 2014 (HHS Reference No. E–003–2014–0–US–01);
2. United States Patent No. 10,323,083, issued 18 June 2019 (HHS Reference No. E–003–2014–0–US–06);
3. United States Patent Application No. 16/391,101, filed 22 April 2019

(HHS Reference No. E–003–2014–0–US–07);

4. International Patent Application No. PCT/US2015/011433, filed 14 January 2015 (HHS Reference No. E–003–2014–0–PCT–02);

5. Australia Patent No. 2015206515, issued 26 March 2020 (HHS Reference No. E–003–2014–0–AU–03);

6. Canada Patent Application No. 2931005, filed 14 January 2015 (HHS Reference No. E–003–2014–0–CA–04);

7. European Patent No. 3 094 350 B1, issued 04 March 2020 (HHS Reference No. E–003–2014–0–EP–05) and all of its national validations;

8. European Patent Application No. 19219282.1, filed 14 January 2015 (HHS Reference No. E–003–2014–0–EP–11); and

9. any and all other U.S. and ex-U.S. patents and patent applications claiming priority to any one of the foregoing, now or in the future.

The patent and patent application rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the fields of use may be limited to the following: The development, manufacture, distribution, sale and use of one or more fusion proteins for the treatment of humans with short stature associated with one or more genetic conditions.

These technologies disclose, *e.g.,* monoclonal antibodies and antibody fragments that specifically bind to matrilin-3, conjugates including these molecules, and nucleic acid molecules encoding the antibodies, antigen binding fragments and conjugates. Also disclosed are compositions including the disclosed antibodies, antigen binding fragments, conjugates, and nucleic acid molecules. Methods of treating or inhibiting a cartilage disorder in a subject, as well as methods of increasing chondrogenesis in cartilage tissue are further provided. The methods can be used, for example, for treating or inhibiting a growth plate disorder in a subject, such as a skeletal dysplasia or short stature.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 11, 2021.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2021–01488 Filed 1–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: R21 Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences.

Date: February 19, 2021.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Laura A. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, Research Triangle Park, NC 27709, 984–287–3328, *laura.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 15, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01443 Filed 1–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NST–2 Conflict SEP Additional Applications.

Date: February 18, 2021.

Time: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Delany Torres, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, Neuroscience Center Building (NSC), 6001 Executive Blvd., Suite 3208, Rockville, MD 20852, *delany.torressalazar@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NST–1 Additional Applications.

Date: March 2, 2021.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Rockville, MD 20852, (301) 496–0660, *benzingw@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative: Research Resource Grants for Technology Integration and Dissemination (U24 Clinical Trial Not Allowed).

Date: March 4, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Bo-Shiun Chen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, (301) 496–9223, *bo-shiun.chen@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Center Without Walls for Mechanisms of Neurodegeneration in Frontotemporal Dementia (FTD) (U54 Clinical Trial Not Allowed).

Date: March 23–24, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Bo-Shiun Chen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, (301) 496–9223, *bo-shiun.chen@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 15, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01445 Filed 1–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Phase II (Topic 166) Leveraging Health IT Solutions to Combat Opioid Misuse.

Date: February 12, 2021.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Division of Extramural Review, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 496–9350, *sheila.pirooznia@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 15, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01446 Filed 1–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Conference Grant Review.

Date: February 12, 2021.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1076, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carol Lambert, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1076, Bethesda, MD 20892, 301–435–0814, *lambert@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 15, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01450 Filed 1–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: February 18–19, 2021.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, National Institutes of Health, 6701

Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cheryl Nordstrom, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Suite 703H, Bethesda, MD 20892, (301) 827–1499, *cheryl.nordstrom@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 15, 2021.

Tyeshia Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01444 Filed 1–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Child Psychopathology and Developmental Disabilities Study Section.

Date: February 17–19, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Katherine Colona Morasch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, *moraschkc@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Integrative Myocardial Physiology/Pathophysiology B Study Section.

Date: February 18–19, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: February 18–19, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maribeth Champoux, Ph.D., BA, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness.

Date: February 18, 2021.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Katherine Colona Morasch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594–9147, *moraschkc@csr.nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

Date: February 23–24, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Angela Y. Ng, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *ngan@mail.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: February 23–24, 2021.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert Gersch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–867–5309, *robert.gersch@nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

Date: February 23–24, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, NIH, 6701 Rockledge Dr., Room 6214, Bethesda, MD 20892, 301.402.3019, *andrew.wolfe@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Arthritis, Connective Tissue and Skin Sciences.

Date: February 23, 2021.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301–435–1850, *limc4@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: February 23–24, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, 301 435–2514, *riverase@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 15, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01447 Filed 1–22–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0019]

Vessel Entrance or Clearance Statement

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 26, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0019 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Vessel Entrance or Clearance Statement.

OMB Number: 1651–0019.

Form Number: CBP Form 1300.

Current Actions: Extension.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 1300, *Vessel Entrance or Clearance Statement,* is used to collect essential commercial vessel data at time of formal entrance and clearance in U.S. ports. The form allows the master to attest to the truthfulness of all CBP forms associated with the manifest package, and collects information about the vessel, cargo, purpose of entrance, certificate numbers, and expiration for various certificates. It also serves as a record of fees and tonnage tax payments in order to prevent overpayments. CBP Form 1300 was developed through agreement by the United Nations Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. This form is authorized by 19 U.S.C. 1431, 1433, and 1434, and provided for by 19 CFR part 4, and accessible at *http://www.cbp.gov/newsroom/publications/forms?title=1300.*

Type of Information Collection: CBP Form 1300 Vessel Entrance or Clearance Statement.

Estimated Number of Respondents: 2,624.

Estimated Number of Annual Responses per Respondent: 72.

Estimated Number of Total Annual Responses: 188,928.

Estimated Time per Response: 30 minutes or (.5) hours.

Estimated Total Annual Burden Hours: 94,464.

Dated: January 12, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–00966 Filed 1–22–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2102]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 26, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for

each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2102, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Palm Beach County, Florida and Incorporated Areas Project: 15–04–4157S Preliminary Date: December 20, 2019	
City of Boca Raton	Zoning Department, 200 Northwest 2nd Avenue, Boca Raton, FL 33432.
City of Boynton Beach	City Hall, 100 East Ocean Avenue, Boynton Beach, FL 33435.
City of Delray Beach	Building Division, 100 Northwest 1st Avenue, Delray Beach, FL 33444.
City of Lake Worth Beach	Community Sustainability Department, 1900 2nd Avenue North, Lake Worth Beach, FL 33461.
City of Palm Beach Gardens	Engineering Department, 10500 North Military Trail, Palm Beach Gardens, FL 33410.
City of Riviera Beach	Development Services, 600 West Blue Heron Boulevard, Riviera Beach, FL 33404.
City of West Palm Beach	Building Division, 401 Clematis Street, West Palm Beach, FL 33401.
Town of Briny Breezes	Town Hall, 4802 North Ocean Boulevard, Briny Breezes, FL 33435.
Town of Gulf Stream	Town Hall, 100 Sea Road, Gulf Stream, FL 33483.
Town of Highland Beach	Building Department, 3616 South Ocean Boulevard, Highland Beach, FL 33487.
Town of Hypoluxo	Town Hall, 7580 South Federal Highway, Hypoluxo, FL 33462.
Town of Juno Beach	Building Department, 340 Ocean Drive, Juno Beach, FL 33408.
Town of Jupiter	Utilities Department, 210 Military Trail, Jupiter, FL 33458.
Town of Jupiter Inlet Colony	Building and Zoning Department, 50 Colony Road, Jupiter Inlet Colony, FL 33469.
Town of Lake Park	Community Development Department, 535 Park Avenue, Lake Park, FL 33403.
Town of Lantana	Building Department, 504 Greynolds Circle, Lantana, FL 33462.
Town of Manalapan	Town Hall, 600 South Ocean Boulevard, Manalapan, FL 33462.
Town of Ocean Ridge	Building Department, 6450 North Ocean Boulevard, Ocean Ridge, FL 33435.
Town of Palm Beach	Building Division, 360 South County Road, Palm Beach, FL 33480.

Community	Community map repository address
Town of Palm Beach Shores	Building Department, 247 Edwards Lane, Palm Beach Shores, FL 33404.
Town of South Palm Beach	Building Department, 3577 South Ocean Boulevard, South Palm Beach, FL 33480.
Unincorporated Areas of Palm Beach	Palm Beach County Planning, Zoning and Building Department, 2300 North Jog Road, West Palm Beach, FL 33411.
Village of North Palm Beach	Community Development Department, 420 US Highway 1, Suite 21, North Palm Beach, FL 33408.
Village of Tequesta	Building Department, 345 Tequesta Drive, Tequesta, FL 33469.
Wake County, North Carolina and Incorporated Areas Project: 11–04–7660S Preliminary Date: June 19, 2020	
City of Raleigh	Municipal Building, Engineering Department, 222 West Hargett Street, Raleigh, NC 27601.
Town of Apex	Engineering Department, 73 Hunter Street, Apex, NC 27502.
Town of Cary	Stormwater Services Division, 316 North Academy Street, Cary, NC 27513.
Town of Fuquay-Varina	Engineering Department, 134 North Main Street, Fuquay-Varina, NC 27526.
Town of Holly Springs	Engineering Department, 128 South Main Street, Holly Springs, NC 27540.
Town of Knightdale	Town Hall, 950 Steeple Square Court, Knightdale, NC 27545.
Town of Morrisville	Town Hall, 100 Town Hall Drive, Morrisville, NC 27560.
Town of Wake Forest	Planning Department, 301 South Brooks Street, 3rd Floor, Wake Forest, NC 27587.
Wake County Unincorporated Areas	Waverly F. Akins Building, Wake County Environmental Services Department, 337 South Salisbury Street, Raleigh, NC 27601.
Columbia County, Pennsylvania and Incorporated Areas Project: 15–03–0227S Preliminary Date: May 31, 2019 and August 28, 2020	
Borough of Benton	Borough Office, 590 Everett Street, Benton, PA 17814.
Borough of Berwick	City Hall, 1800 North Market Street, Berwick, PA 18603.
Borough of Briar Creek	Briar Creek Borough Hall, 6029 Park Road, Berwick, PA 18603.
Borough of Catawissa	Borough Hall, 307 Main Street, Catawissa, PA 17820.
Borough of Millville	Borough Office, 136 Morehead Avenue, Millville, PA 17846.
Borough of Orangeville	Borough Building, 301 Mill Street, Orangeville, PA 17859.
Borough of Stillwater	Borough Hall, 63 McHenry Street, Stillwater, PA 17878.
Town of Bloomsburg	Town Hall, 301 East 2nd Street, Bloomsburg, PA 17815.
Township of Beaver	Beaver Township Secretary, 650 Beaver Valley Road, Bloomsburg, PA 17815.
Township of Benton	Township Building, 236 Shickshinny Road, Benton, PA 17814.
Township of Briar Creek	Briar Creek Township Building, 150 Municipal Road, Berwick, PA 18603.
Township of Catawissa	Township Building, 153 Old Reading Road, Catawissa, PA 17820.
Township of Cleveland	Cleveland Township Building, 46 Jefferson Road, Elysburg, PA 17824.
Township of Conyngham	Conyngham Township Building, 209 Smith Street, Wilburton, PA 17888.
Township of Fishing Creek	Fishing Creek Township Building, 3188 State Route 487, Orangeville, PA 17859.
Township of Franklin	Franklin Township Building, 313 Mount Zion Road, Catawissa, PA 17820.
Township of Greenwood	Greenwood Township Building, 90 Shed Road, Millville, PA 17846.
Township of Hemlock	Hemlock Township Building, 26 Firehall Road, Bloomsburg, PA 17815.
Township of Jackson	Jackson Municipal Building, 862 Waller-Divide Road, Benton, PA 17814.
Township of Locust	Locust Municipal Building, 1223A Numidia Drive, Catawissa, PA 17820.
Township of Madison	Madison Township Office, 136 Morehead Avenue, Millville, PA 17846.
Township of Main	Main Township Office, 345 Church Road, Bloomsburg, PA 17815.
Township of Mifflin	Mifflin Township Building, 207 East First Street, Mifflinville, PA 18631.
Township of Montour	Montour Township Office, 195 Rupert Drive, Bloomsburg, PA 17815.
Township of Mount Pleasant	Mount Pleasant Community Center, 558 Millertown Road, Bloomsburg, PA 17815.
Township of North Centre	North Centre Township Building, 1059 State Route 93, Berwick, PA 18603.
Township of Orange	Orange Municipal Building, 2028 State Route 487, Orangeville, PA 17859.
Township of Pine	Pine Township Building, 309 Wintersteen School Road, Millville, PA 17846.
Township of Roaring Creek	Roaring Creek Township Secretary, 28 Brass School Road, Catawissa, PA 17820.
Township of Scott	Scott Municipal Building, 350 Tenny Street, Bloomsburg, PA 17815.

Community	Community map repository address
Township of South Centre	South Centre Municipal Building, 6260 Fourth Street, Bloomsburg, PA 17815.
Township of Sugarloaf	Sugarloaf Municipal Building, 90 Schoolhouse Road, Benton, PA 17814.
Carbon County, Wyoming and Incorporated Areas Project: 15–08–0119S Preliminary Date: July 16, 2020	
City of Rawlins	Public Works Department, 915 3rd Street, Rawlins, WY 82301.
Town of Baggs	Town Hall, 130 Penland Street, Baggs, WY 82321.
Town of Dixon	Town Hall, 301 Cottonwood Street, Dixon, WY 82323.
Town of Elk Mountain	Town Hall, 206 Bridge Street, Elk Mountain, WY 82324.
Town of Encampment	Town Hall, 614 McCaffrey Avenue, Encampment, WY 82325.
Town of Hanna	Town Hall, 301 South Adams Street, Hanna, WY 82327.
Town of Medicine Bow	Town Hall, 319 Pine Street, Medicine Bow, WY 82329.
Town of Riverside	Town Hall, 207 West Welton Street, Riverside, WY 82325.
Town of Saratoga	Town Hall, 110 East Spring Street, Saratoga, WY 82331.
Town of Sinclair	Town Hall, 300 Lincoln Avenue, Sinclair, WY 82334.
Unincorporated Areas of Carbon County	Carbon County Planning and Development Department, 215 West Buffalo Street, Suite 336, Rawlins, WY 82301.

[FR Doc. 2021–01512 Filed 1–22–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of May 18, 2021 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Morgan County, Colorado and Incorporated Areas Docket No.: FEMA–B–1977	
City of Fort Morgan	Planning and Zoning Office, 110 Sherman Street, Fort Morgan, CO 80701.
Unincorporated Areas of Morgan County	Morgan County Planning and Zoning Department, 231 Ensign Street, Fort Morgan, CO 80701.

Community	Community map repository address
Sedgwick County, Colorado and Incorporated Areas Docket No.: FEMA–B–1977	
Town of Julesburg	Town Hall, 100 West 2nd Street, Julesburg, CO 80737.
Town of Ovid	Town Hall, 211 Main Street, Ovid, CO 80744.
Town of Sedgwick	Town Hall, 29 Main Avenue, Sedgwick, CO 80749.
Unincorporated Areas of Sedgwick County	Sedgwick County Courthouse, 315 Cedar Street, Suite 220, Julesburg, CO 80737.
Washington County, Colorado and Incorporated Areas Docket No.: FEMA–B–1977	
Town of Akron	Town Hall, 245 Main Avenue, Akron, CO 80720.
Town of Otis	Town Hall, 102 South Washington Street, Otis, CO 80743.
Unincorporated Areas of Washington County	Washington County Courthouse, 150 Ash Avenue, Akron, CO 80720.
Fayette County, Iowa and Incorporated Areas Docket No.: FEMA–B–1910	
City of Arlington	City Clerk's Office, 755 Main Street, Arlington, IA 50606.
City of Clermont	City Hall, 505 Larrabee Street, Clermont, IA 52135.
City of Elgin	City Hall, 212 Main Street, Elgin, IA 52141.
City of Fayette	City Hall, 11 South Main Street, Fayette, IA 52142.
City of Hawkeye	Government Office, 104 South 2nd Street, Hawkeye, IA 52147.
City of Maynard	City Clerk's Office, 135 3rd Street South, Maynard, IA 50655.
City of Oelwein	City Hall, 20 2nd Avenue Southwest, Oelwein, IA 50662.
City of Randalia	City Hall, 107 North 2nd Street, Randalia, IA 52164.
City of St. Lucas	City Hall, 101 West Main Street, St. Lucas, IA 52166.
City of Wadena	City Hall, 136 South Mill Street, Wadena, IA 52169.
City of Waucoma	Community Center, 113 1st Avenue Southwest, Waucoma, IA 52171.
City of Westgate	City Hall, 104 North Cass Street, Westgate, IA 50681.
City of West Union	City Hall, 612 Highway 150 South, West Union, IA 52175.
Unincorporated Areas of Fayette County	Fayette County Courthouse, 114 North Vine Street, West Union, IA 52175.
Roger Mills County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–1966	
Town of Cheyenne	Town Hall, 414 East Broadway Avenue, Cheyenne, OK 73628.
Town of Hammon	Town Hall, 715 Main Street, Hammon, OK 73650.
Town of Reydon	Cheyenne Town Hall, 414 East Broadway Avenue, Cheyenne, OK 73628.
Town of Strong City	Roger Mills County Courthouse, 500 East Broadway Avenue, Cheyenne, OK 73628.
Unincorporated Areas of Roger Mills County	Roger Mills County Courthouse, 500 East Broadway Avenue, Cheyenne, OK 73628.
Schuylkill County, Pennsylvania (All Jurisdictions) Docket No.: FEMA–B–1927	
Borough of Ashland	Borough Hall, 401 South 18th Street, Ashland, PA 17921.
Borough of Auburn	Borough Hall, 451 Pearson Street, Auburn, PA 17922.
Borough of Coaldale	Borough Office, 221 3rd Street, Coaldale, PA 18218.
Borough of Cressona	Municipal Building, 68 South Sillyman Street, Cressona, PA 17929.
Borough of Deer Lake	Deer Lake Borough Municipal Building, 238 Lakefront Drive, Orwigsburg, PA 17961.
Borough of Frackville	Borough Hall, 42 South Center Street, Frackville, PA 17931.
Borough of Gilberton	Gilberton Borough Hall, 2710 Main Street, Mahanoy Plane, PA 17949.
Borough of Girardville	Borough Hall, 201 North 4th Street, Girardville, PA 17935.
Borough of Gordon	Municipal Building, 324 East Plane and Otto Streets, Gordon, PA 17936.
Borough of Landingville	Borough Hall, 8 Park Street, Landingville, PA 17972.
Borough of Mahanoy City	Municipal Building, 239 East Pine Street, Mahanoy City, PA 17948.
Borough of McAdoo	Borough Hall, 23 North Hancock Street, McAdoo, PA 18237.
Borough of Mechanicsville	Mechanicsville Borough Hall, 918 1st Street, Pottsville, PA 17901.
Borough of Middleport	Borough Hall, 27 Washington Street, Middleport, PA 17953.
Borough of Minersville	Borough Hall, 2 East Sunbury Street, Minersville, PA 17954.
Borough of Mount Carbon	Borough Hall, 1108 South Centre Street, Mount Carbon, PA 17901.
Borough of New Philadelphia	Borough Hall, 15 Macomb Street, New Philadelphia, PA 17959.
Borough of New Ringgold	Borough Building, 302 East Railroad Avenue, New Ringgold, PA 17960.
Borough of Orwigsburg	Borough Hall, 209 North Warren Street, Orwigsburg, PA 17961.
Borough of Palo Alto	Palo Alto Borough Hall, 142 East Bacon Street, Pottsville, PA 17901.
Borough of Pine Grove	Borough Hall, 1 Snyder Avenue, Pine Grove, PA 17963.
Borough of Port Carbon	Borough Hall, 301 1st Street, Port Carbon, PA 17965.

Community	Community map repository address
Borough of Port Clinton	Port Clinton Borough Building, 44 Motel Drive, Shartlesville, PA 19554.
Borough of Ringtown	Borough Hall, 31 South Center Street, Ringtown, PA 17967.
Borough of Schuylkill Haven	Borough Hall, 333 Center Avenue, Schuylkill Haven, PA 17972.
Borough of Shenandoah	Municipal Building, 15 West Washington Street, Shenandoah, PA 17976.
Borough of St. Clair	Borough Hall, 16 South 3rd Street, St. Clair, PA 17970.
Borough of Tamaqua	Municipal Building, 320 East Broad Street, Tamaqua, PA 18252.
Borough of Tower City	Borough Building, 219 East Colliery Avenue, Tower City, PA 17980.
Borough of Tremont	Municipal Building, 139 Clay Street, Suite 1, Tremont, PA 17981.
City of Pottsville	City Hall, 401 North Centre Street, Pottsville, PA 17901.
Township of Barry	Barry Township Community Center, 868 Deep Creek Road, Ashland, PA 17921.
Township of Blythe	Township of Blythe, Lehigh Engineering, 200 Mahantongo Street, Pottsville, PA 17901.
Township of Branch	Branch Township Building, 46 Phoenix Park Road, Llewellyn, PA 17944.
Township of Butler	Butler Township Building, 211 Broad Street, Ashland, PA 17921.
Township of Cass	Cass Township Municipal Building, 1209 Valley Road, Pottsville, PA 17901.
Township of Delano	Municipal Building, 1 Hazle Street, Delano, PA 18220.
Township of East Brunswick	East Brunswick Township Building, 35 West Catawissa Street, New Ringgold, PA 17960.
Township of East Norwegian	East Norwegian Township Building, 593 Port Carbon Saint Clair Highway, Pottsville, PA 17901.
Township of East Union	East Union Township Municipal Building, 10 East Elm Street, Sheppton, PA 18248.
Township of Eldred	Eldred Township Building, 154 Ridge Road, Pitman, PA 17964.
Township of Foster	Foster Township Building, 1540 Sunbury Road, Pottsville, PA 17901.
Township of Frailey	Frailey Township Building, 23 Maryland Street, Donaldson, PA 17981.
Township of Hegins	Hegins Township Municipal Building, 421 Gap Street, Valley View, PA 17983.
Township of Hubley	Hubley Township Building, 2208 East Main Street, Sacramento, PA 17968.
Township of Kline	Kline Township Building, 30 5th Street, Kelayres, PA 18231.
Township of Mahanoy	Mahanoy Township Building, 1010 West Centre Street, Mahanoy City, PA 17948.
Township of New Castle	New Castle Township Building, 248–250 Broad Street, St. Clair, PA 17970.
Township of North Manheim	North Manheim Township Building, 303 Manheim Road, Pottsville, PA 17901.
Township of North Union	North Union Township Building, 185 Mahanoy Street, Nuremberg, PA 18241.
Township of Norwegian	Norwegian Township Building, 506 Maple Avenue, Mar Lin, PA 17951.
Township of Pine Grove	Township Building, 175 Oak Grove Road, Pine Grove, PA 17963.
Township of Porter	Porter Township Building, 309 West Wiconisco Street, Muir, PA 17957.
Township of Reilly	Reilly Township, Newtown Fire Company, 36 Wood Street, Tremont, PA 17981.
Township of Rush	Rush Township Building, 104 Mahanoy Avenue, Tamaqua, PA 18252.
Township of Ryan	Ryan Township Building, 36 North 5th Avenue, Barnesville, PA 18214.
Township of Schuylkill	Schuylkill Township Building, 75 Walnut Street, Mary-D, PA 17952.
Township of South Manheim	South Manheim Township Building, 3089 Fair Road, Auburn, PA 17922.
Township of Tremont	Tremont Township Building, 166 Molleystown Road, Pine Grove, PA 17963.
Township of Union	Union Township Building, 155 Zion Grove Road, Ringtown, PA 17967.
Township of Upper Mahantongo	Upper Mahantongo Township Building, 6 Municipal Road, Klingerstown, PA 17941.
Township of Walker	Walker Township Building, 9 Township Road, Tamaqua, PA 18252.
Township of Washington	Washington Township Building, 225 Frantz Road, Pine Grove, PA 17963.
Township of Wayne	Wayne Township Building, 10 Municipal Road, Schuylkill Haven, PA 17972.
Township of West Brunswick	West Brunswick Township Building, 95 Municipal Road, Orwigsburg, PA 17961.
Township of West Mahanoy	West Mahanoy Township Building, 190 Pennsylvania Avenue, Shenandoah, PA 17976.
Township of West Penn	West Penn Township Building, 27 Municipal Road, New Ringgold, PA 17960.

[FR Doc. 2021–01514 Filed 1–22–21; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama: Madison (FEMA Docket No.: B–2064).	City of Madison (19–04–3126P).	The Honorable Paul Finley, Mayor, City of Madison, 100 Hughes Road, Madison, AL 35758.	Engineering Department, 100 Hughes Road, Madison, AL 35758.	Oct. 13, 2020	010308
Delaware: Sussex (FEMA Docket No.: B–2054).	Town of South Bethany (20–03–1169P).	The Honorable Tim Saxton, Mayor, Town of South Bethany, 402 Evergreen Road, South Bethany, DE 19930.	Town Hall, 402 Evergreen Road, South Bethany, DE 19930.	Dec. 18, 2020	100051
Florida:					
Lee (FEMA Docket No.: B–2059).	City of Fort Myers (20–04–2960P).	Mr. Saeed Kazemi, Manager, City of Fort Myers, 1825 Hendry Street, Suite 101, Fort Myers, FL 33901.	Community Development Department, 1825 Hendry Street, Fort Myers, FL 33901.	Dec. 18, 2020	125106
Lee (FEMA Docket No.: B–2064).	Town of Fort Myers Beach (20–04–2530P).	The Honorable Ray Murphy, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Dec. 24, 2020	120673
Manatee (FEMA Docket No.: B–2059).	Unincorporated areas of Manatee County (20–04–3496P).	The Honorable Betsy Benac, Chair, Manatee County Board of Commissioners, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Administration Building, 1112 Manatee Avenue West, Bradenton, FL 34205.	Dec. 21, 2020	120153
Palm Beach (FEMA Docket No.: B–2064).	City of Westlake (20–04–1257P).	The Honorable Roger Manning, Mayor, City of Westlake, 4001 Seminole Pratt Whitney Road, Westlake, FL 33470.	City Hall, 4001 Seminole Pratt Whitney Road, Westlake, FL 33470.	Dec. 29, 2020	120018
Palm Beach (FEMA Docket No.: B–2059).	Unincorporated areas of Palm Beach County (20–04–1768P).	Ms. Verdenia C. Baker, Palm Beach County Administrator, 301 North Olive Avenue, Suite 1101, West Palm Beach, FL 33401.	Palm Beach County Building Division, 2300 North Jog Road, West Palm Beach, FL 33411.	Dec. 14, 2020	120192

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Pasco (FEMA Docket No.: B–2054).	Unincorporated areas of Pasco County (20–04–2795P).	The Honorable Mike Moore, Chairman, Pasco County Board of Commissioners, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Development Review Division, 7530 Little Road, New Port Richey, FL 34654.	Dec. 17, 2020	120230
Polk (FEMA Docket No.: B–2059).	Unincorporated areas of Polk County (20–04–3597P).	The Honorable Bill Braswell, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	Dec. 24, 2020	120261
Seminole (FEMA Docket No.: B–2059).	City of Longwood (20–04–2794P).	The Honorable Clint Gioielli, Acting Manager, City of Longwood, 175 West Warren Avenue, Longwood, FL 32750.	City Hall, 175 West Warren Avenue, Longwood, FL 32750.	Dec. 21, 2020	120292
Seminole (FEMA Docket No.: B–2054).	Unincorporated areas of Seminole County (20–04–1621P).	The Honorable Jay Zembower, Chairman, Seminole County Board of Commissioners, 1101 East 1st Street, Sanford, FL 32771.	Seminole County Services Building, 1101 East 1st Street, Sanford, FL 32771.	Dec. 16, 2020	120289
Oklahoma: Oklahoma (FEMA Docket No.: B–2059).	City of Harrah (20–06–0411P).	The Honorable Larry Fryar, Mayor, City of Harrah, 19625 Northeast 23rd Street, Harrah, OK 73045.	City Hall, 19625 Northeast 23rd Street, Harrah, OK 73045.	Dec. 14, 2020	400140
Pennsylvania:					
Montgomery (FEMA Docket No.: B–2059).	Township of Hatfield (20–03–0395P).	The Honorable Tom Zipfel, President, Township of Hatfield Board of Commissioners, 1950 School Road, Hatfield, PA 19440.	Township Hall, 1950 School Road, Hatfield, PA 19440.	Dec. 28, 2020	420699
Montgomery (FEMA Docket No.: B–2059).	Township of Hatfield (20–03–1140P).	The Honorable Tom Zipfel, President, Township of Hatfield Board of Commissioners, 1950 School Road, Hatfield, PA 19440.	Township Hall, 1950 School Road, Hatfield, PA 19440.	Dec. 18, 2020	420699
Montgomery (FEMA Docket No.: B–2059).	Township of Montgomery (20–03–0395P).	The Honorable Tanya C. Bamford, Chair, Township of Montgomery Board of Supervisors, 1001 Stump Road, Montgomeryville, PA 18936.	Planning and Zoning Department, 1001 Stump Road, Montgomeryville, PA 18936.	Dec. 28, 2020	421226
Northampton (FEMA Docket No.: B–2054).	Township of Lower Nazareth (20–03–0708P).	The Honorable James S. Pennington, Chairman, Township of Lower Nazareth Board of Supervisors, 623 Municipal Drive, Nazareth, PA 18064.	Planning and Zoning Department, 623 Municipal Drive, Nazareth, PA 18064.	Dec. 14, 2020	422253
South Carolina: Berkeley (FEMA Docket No.: B–2064).	Unincorporated areas of Berkeley County (19–04–6176P).	The Honorable Johnny Cribb, Chairman, Berkeley County Council, 1003 Highway 52, Moncks Corner, SC 29461.	Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, SC 29461.	Dec. 31, 2020	450029
Texas:					
Bexar (FEMA Docket No.: B–2064).	City of San Antonio (20–06–2465P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Storm Water Division, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	Dec. 28, 2020	480045
Bexar (FEMA Docket No.: B–2064).	Unincorporated areas of Bexar County (19–06–3962P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	Dec. 28, 2020	480035
Bexar (FEMA Docket No.: B–2064).	Unincorporated areas of Bexar County (20–06–0078P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	Dec. 28, 2020	480035
Bexar (FEMA Docket No.: B–2064).	Unincorporated areas of Bexar County (20–06–2465P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	Dec. 28, 2020	480035
Collin (FEMA Docket No.: B–2054).	City of Plano (20–06–0790P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Suite 300, Plano, TX 75074.	Department of Engineering, 1520 K Avenue, Suite 250, Plano, TX 75074.	Dec. 14, 2020	480140
Guadalupe (FEMA Docket No.: B–2067).	City of San Marcos (20–06–3176P).	The Honorable Jane Hughson, Mayor, City of San Marcos, 630 East Hopkins Street, San Marcos, TX 78666.	Engineering Department, 630 East Hopkins Street, San Marcos, TX 78666.	Dec. 31, 2020	485505
Harris (FEMA Docket No.: B–2059).	Unincorporated areas of Harris County (20–06–2000P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77002.	Dec. 14, 2020	480287
Harris (FEMA Docket No.: B–2064).	Unincorporated areas of Harris County (20–06–2070P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77002.	Dec. 28, 2020	480287
Midland (FEMA Docket No.: B–2064).	City of Midland (19–06–3886P).	The Honorable Patrick Payton, Mayor, City of Midland, 300 North Loraine Street, Midland, TX 79701.	City Hall, 300 North Loraine Street, Midland, TX 79701.	Dec. 29, 2020	480477
Rockwall (FEMA Docket No.: B–2059).	City of Rockwall (20–06–1071P).	Mr. Richard R. Crowley, Manager, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	Engineering Department, 385 South Goliad Street, Rockwall, TX 75087.	Dec. 28, 2020	480547
Tarrant (FEMA Docket No.: B–2059).	City of Fort Worth (20–06–1449P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Dec. 24, 2020	480596

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Tarrant (FEMA Docket No.: B–2054).	City of Fort Worth (20–06–1450P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Dec. 14, 2020	480596
Tarrant (FEMA Docket No.: B–2054).	City of Haltom City (20–06–1525P).	The Honorable An Truong, Mayor, City of Haltom City, 5024 Broadway Avenue, Haltom City, TX 76117.	Public Works Services Department, 5024 Broadway Avenue, Haltom City, TX 76117.	Dec. 14, 2020	480599
Williamson (FEMA Docket No.: B–2059).	City of Cedar Park (20–06–1685P).	The Honorable Corbin Van Arsdale, Mayor, City of Cedar Park, 450 Cypress Creek Road, Building 1, Cedar Park, TX 78613.	Engineering Department, 450 Cypress Creek Road, Building 1, Cedar Park, TX 78613.	Dec. 14, 2020	481282
Virginia:					
Prince William (FEMA Docket No.: B–2054).	City of Manassas (20–03–0476P).	The Honorable Harry J. Parrish, II, Mayor, City of Manassas, 9027 Center Street, Suite 101, Manassas, VA 20110.	Public Works Department, 8500 Public Works Drive, Manassas, VA 20110.	Dec. 17, 2020	510122
Prince William (FEMA Docket No.: B–2054).	Unincorporated areas of Prince William County (20–03–0476P).	Mr. Christopher E. Martino, Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, Watershed Management Branch, 5 County Complex Court, Prince William, VA 22192.	Dec. 17, 2020	510119
York (FEMA Docket No.: B–2054).	City of Newport News (20–03–0336P).	The Honorable McKinley L. Price, Mayor, City of Newport News, 2400 Washington Avenue, 10th Floor, Newport News, VA 23607.	City Hall, 2400 Washington Avenue, Newport News, VA 23607.	Dec. 22, 2020	510103
York (FEMA Docket No.: B–2054).	Unincorporated areas of York County (20–03–0336P).	Mr. Neil A. Morgan, York County Administrator, P.O. Box 532, Yorktown, VA 23692.	York County Department of Public Works, 105 Service Drive, Yorktown, VA 23692.	Dec. 22, 2020	510182

[FR Doc. 2021–01511 Filed 1–22–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2104]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 26, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2104, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Ventura County, California and Incorporated Areas Project: 10–09–0024S Preliminary Date: July 31, 2020	
City of Fillmore	City Hall, 250 Central Avenue, Fillmore, CA 93015.
City of Santa Paula	Public Works Department, 866 East Main Street, Santa Paula, CA 93060.
Unincorporated Areas of Ventura County	Public Works Agency, 800 South Victoria Avenue, Ventura, CA 93009.
Hendricks County, Indiana and Incorporated Areas Project: 19–05–0004S Preliminary Date: May 11, 2020	
Town of Avon	Town Hall Offices, 6570 East US Highway 36, Avon, IN 46123.
Town of Brownsburg	Town Hall Offices, 61 North Green Street, Brownsburg, IN 46112.
Town of Danville	Building Department, 49 North Wayne Street, Danville, IN 46122.
Unincorporated Areas of Hendricks County	Hendricks County Government Center, 355 South Washington Street, Danville, IN 46122.
St. Clair County, Michigan (All Jurisdictions) Project: 14–05–2818S Preliminary Date: September 30, 2019 and October 30, 2020	
Charter Township of Fort Gratiot	Municipal Center, 3720 Keewahdin Road, Fort Gratiot, MI 48059.
City of Port Huron	Municipal Office Center, 100 McMorran Boulevard, Port Huron, MI 48060.
Township of Burtchville	Township Hall, 4000 Burtch Road, Burtchville, MI 48059.
Township of Port Huron	Township Office, 3800 Lapeer Road, Port Huron, MI 48060.

[FR Doc. 2021–01513 Filed 1–22–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7040–N–02; OMB Control No. 2577–0161]

60-Day Notice of Proposed Information Collection: Public Housing Contracting With Resident-Owned Business/Application Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 26, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (Room 3178), Washington, DC 20410; telephone 202–402–3374, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Rogers.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Contracting with Resident-Owned Businesses/Application Requirements.

OMB Approval Number: 2577–0161.

Type of Request: Revision of a currently approved collection.

Form Numbers: N/A.

Description of the need for the information and proposed use: PHAs that enter contracts with resident-owned businesses prior to December 26, 2014 must comply with the requirements/procedures set forth in, 24 CFR 85.36(h) and 24 CFR 85.36(i). Contracts with resident-owned businesses entered after December 26, 2014 must also comply with 24 CFR part 963, 2 CFR 200.325, 2 CFR 200.326 and other such contract terms that may be applicable to procurement under the Department's regulations. These requirements include:

- Certified copies of any State, county, or municipal licenses that may be required of the business to engage in the type of business activity for which it was formed. Where applicable, the PHA must obtain a certified copy of its corporate charter or other organizational document that verifies that the business was properly formed in accordance with State law.
- Certification that shows the business is owned by residents, disclosure documents that indicate all owners of the business and each owner's percentage of the business along with sufficient evidence that demonstrates to the satisfaction of the PHA that the business has the ability to perform successfully under the terms and conditions of the proposed contract.
- Certification as to the number of contracts awarded, and the dollar amount of each contract award received under the alternative procurement process; and
- Contract award documents, proof of bonding documents, independent cost estimates and comparable price analyses.

Members of Affected Public: Public Housing Agencies and Applicable Resident Entrepreneurs.

Estimation of the Total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Estimated number of respondents: 76. The calculation for burden hours is as follows: Calculation for number of respondents: 76 (estimated number of PHAs contracting with resident owned businesses) × 24 (number of hours for procurement process) = 1,824 total hours. The Department estimates that out of a total of 3,775 [1] PHAs only 2 percent or 76 PHAs contract with resident owned business. This number is less than the previous request due to several PHAs choosing to leave the program.

The national average PHA staff salary = $51,000 [2] per year or $24.00 [3] per hour.

The calculation for costs is as follows: 76 PHAs × 24 hours = 1,824 hours × $24 = $43,776.

Information collection	Number of respondents	* Average number of reponses per respondent	Total annual responses	Burden hours/ minutes per response	Total hours	Hourly cost	Total annual cost
2577–0161	76	1	76	24	1,824	$24.00	$43,776

Status of the Proposed Information Collection: Meeting HUD Regulation requirements.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 8, 2021.

Merrie Nichols-Dixon,

Director, Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2021–01479 Filed 1–22–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7037–N–01]

Affirmative Fair Housing Marketing Plan—Information Collection: Solicitation of Comment 60-Day Notice Under Paperwork Reduction Act of 1995; OMB Control No.: 2529–0013

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice solicits public comment for a period of 60 days, consistent with the Paperwork Reduction Act of 1995 (PRA), on the Affirmative Fair Housing Marketing Plan (AFHMP) forms. The AFHMP forms collect information on the advertising and outreach activities of owners/developers of HUD Multifamily, Single Family, and Condominium/Cooperative Housing projects to attract applicants/buyers throughout the housing market area regardless of race, color, national origin, religion, sex, disability, or familial status. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comment Due Date:* March 26, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410. Communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410;

[1] Inventory Management/Public Housing Information Center (IMS/PIC) system, 10/26/2020.

[2] *ziprecruiter.com, https://www.ziprecruiter.com/Salaries/Public-Housing-Authority-Salary.*

[3] Computed Hourly Rates of Pay Using the 2,087-Hour Divisor, *https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/computing-hourly-rates-of-pay-using-the-2087-hour-divisor/.*

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling QDAM at 202–402–3400 (this is not a toll free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: DeAndra Cullen, Deputy Assistant Secretary for Policy, Legislative Initiatives and Outreach, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, at 202–402–4115 (this is not a toll-free number) or *DeAndra.JohnsonCullen@hud.gov*. Individuals with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service during working hours at 800–877–8339 (this is a toll-free number). Copies of the proposed information collection is available at *www.hud.gov*.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Affirmative Fair Housing Marketing Plan.

OMB Approval Number: 2529–0013.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–935.2A, HUD 935.2B, HUD–935.2C.

Description of the need for the information and proposed use: Under the AFHM Regulations (24 CFR part 200, subpart M), all applicants for participation in Federal Housing Administration (FHA) subsidized and unsubsidized housing programs that involve the development or rehabilitation of the following types of housing must submit an AFHM Plan on a prescribed form: (1) Multifamily projects or manufactured home parks of five or more lots, units, or spaces; (2) a single family property, where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision, and a lender is making an initial application for mortgage insurance; or (3) dwelling units, when the applicant's participation in FHA housing programs had exceeded or would thereby exceed development of five or more such dwelling units during the year preceding the application (not counting the development of single family dwelling units for occupancy by a mortgagor on property owned by the mortgagor and in which the applicant had no interest prior to entering into the contract for construction or rehabilitation).

HUD is requesting that the OMB approve the revision of forms: HUD–935.2A Affirmative Fair Housing Marketing Plan—Multifamily Housing, HUD–935.2B Affirmative Fair Housing Marketing Plan—Single Family Housing, and HUD–935.2C Affirmative Fair Housing Marketing Plan—Condominiums or Cooperatives. These forms assist HUD in fulfilling its duty under the Fair Housing Act to administer its programs and activities relating to housing and urban development in a manner that affirmatively furthers fair housing, by promoting a condition in which individuals of similar income levels in the same housing market area have available to them a like range of housing choices, regardless of race, color, national origin, religion, sex, disability, or familial status. This collection also promotes compliance with Executive Order 11063, which requires Federal agencies to take all necessary and appropriate action to prevent discrimination in federally insured and subsidized housing. Under the AFHM Regulations (24 CFR part 200, subpart M), all applicants for participation in Federal Housing Administration (FHA) subsidized and unsubsidized housing programs that involve the development or rehabilitation of the following types of housing must submit an AFHM Plan on a prescribed form: (1) Multifamily projects or manufactured home parks of five or more lots, units, or spaces; (2) a single family property, where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision, and a lender is making an initial application for mortgage insurance; or (3) dwelling units, when the applicant's participation in FHA housing programs had exceeded or would thereby exceed development of five or more such dwelling units during the year preceding the application (not counting the development of single family dwelling units for occupancy by a mortgagor on property owned by the mortgagor and in which the applicant had no interest prior to entering into the contract for construction or rehabilitation). If this information was not collected, it would prevent HUD from ensuring compliance with affirmative fair housing marketing requirements.

The revision to the HUD–935.2A is to clarify the instructions involving when respondents must submit an updated form for HUD review. In addition, there have been formatting changes to clarify when multiple responses are allowed versus singular response in a dropdown format for occupancy and reason for updated submission. There is also a change made to the references to the Census resources for accurate data reporting and prioritization of Decennial Census data. Lastly, the racial and ethnic demographic fields have been updated in the worksheets to match the categories provided in Census data. The HUD–935.2B and C have been edited to include internet and social media advertising.

Respondents: Applicants for FHA subsidized and unsubsidized housing programs.

Estimated Number of Respondents: 5,703. For the HUD 935.2A: On an annual basis, there are approximately 303 respondents that submit new plans and 1,080 respondents that review their existing plans and submit updated plans. There are 4,320 respondents who will review their AFHMP and determine that it does not need to be submitted for HUD approval.

For the HUD 935.2.B & C: On an annual basis, there are approximately 30 respondents that submit new plans.

Estimated Number of Responses: 5,733.

Frequency of Response: 1 per annum.

Average Hours per Response: The average hours per response is 2.61 hours. (For the HUD–935.2A, the hours per response are: 6 hours (new plans) and 4 hours (review and update plans) and 2 hours (review only). For the 935.2B & C, the hours per response is 6 hours).

Total Estimated Burden: 14,958 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–935.2A (MFH)	5,703	1	5,703	New 6 × 303 Review & Update 4 × 1,080. Review 2 × 4,320.	New 1,818 Review & Update 4,320. Review 8,640	*Respondents* $35/hr (professional work). $16/hr (clerical work) $1.25 per report mailing. *Government* $35.93/hr[1] (professional work). $16.35/hr[2] (clerical work).	*Respondents* New = ($35 × 4 × 303) + ($16 × 2 × 303) = $52,116. Updates = ($35 × 2 × 1,080) + ($16 × 2 × $1,080) = $110,160. Reviews = ($35 × 2 × 4,320) = $302,400. Mailing Costs = $1.25 × 1,383 = $1,728.75. Annual Cost = $52,116 +$110,160 + $302,400 + $1,728.75 = $466,404.75. *Government* New = ($35.93 × 3 × 303) + ($16.35 × 0.5 × 303) = $35,137.40. Reviews & Updates = ($35.93 × 3 × 1,080) + ($16.35 × 0.5 × 1,080) = $125,242.20. Annual Cost = $35,137.40+ $125,242.20 = $160,379.60.
HUD–935.2B (SFH) & C (Condos and Co-Ops).	30	1	30	6	180	*Respondents* $35/hr (professional work). $16/hr (clerical work) $1.25 per report mailing. *Government* $35.93/hr (professional work). $16.35/hr (clerical work).	*Respondents* ($35 × 4 × 30) + ($16 × 2 × 30) = $5,160. $1.25 × 30 = $37.50. Annual Cost = $5,160 + $37.50 = $5,197.50. *Government* Annual Cost = ($35.93 × 3 × 30) + ($16.35 × 0.5 × 30) = $3,478.95.
Total	5,733	*1	5,733	Avg. of 2.61	14,958	Avg. of $31.53	*Respondents:* $471,602.25. *Government:* $163,858.55.

[1] Rate for GS 12 Step 5 ($35.93/hr) based on the salary information available on *OPM.gov.*
[2] Rate for GS 5 step 5 ($16.35/hr) based on the salary information available on *OPM.gov.*
* Each.

Solicitation of Public Comment

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In addition, HUD requests comments on ways to modernize marketing given the rise of internet and social media advertising.

HUD encourages interested parties to submit comment in response to these questions.

DeAndra Cullen,

Deputy Assistant Secretary for Policy, Legislative Initiatives and Outreach.

[FR Doc. 2021–01474 Filed 1–22–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7041–N–02]

60-Day Notice of Proposed Information Collection: Phase 1 Evaluation of the Housing Choice Voucher Mobility Demonstration

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information.

The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 26, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Phase 1 Evaluation of the Housing Choice Voucher (HCV) Mobility Demonstration.

OMB Approval Number: Pending.

Type of Request: New.

Form Number: N/A.

Description of the need for the information and proposed use: The Office of Policy Development and Research (PD&R), at the U.S. Department of Housing and Urban Development (HUD), is proposing the collection of information for *Phase 1 Evaluation of the Housing Choice Voucher (HCV) Mobility Demonstration.* Under contract with HUD PD&R, Abt Associates Inc. and its subcontractors the Urban Institute, MEF Associates, Social Policy Research Associates, and Sage Consulting are conducting Phase 1 of a planned two-phase Evaluation of the HCV Mobility Demonstration. The Demonstration is a multi-site, randomized-controlled trial of the effect of housing mobility-related services on the share of HCV holders with children that move to lower poverty areas.

This Demonstration will allow participating public housing agencies (PHAs) throughout the country to implement housing mobility programs by offering mobility-related services to increase the number of voucher families with children living in opportunity areas. Participating PHAs will work together in their regions to adopt administrative policies that further enable housing mobility, increase landlord participation, and reduce barriers for families to move across PHA jurisdictions through portability. Eligible families that consent to participate in the Demonstration are randomly assigned to either receive mobility-related services or to not receive services.

Through the Demonstration, HUD will implement, test, and evaluate whether housing mobility programs expand access to opportunity neighborhoods. The Demonstration will roll out in two phases over a period of approximately six years. The Phase 1 Evaluation has a five-year period of performance and will evaluate the effectiveness of a comprehensive set of mobility-related services at no more than 10 sites. For voucher holders, outcomes of the mobility-related services are hypothesized to be increases in the number of families who move to lower poverty areas. The Phase 1 evaluation will also document the implementation of the Demonstration and analyze the cost-effectiveness of mobility-related services.

Data collection efforts include the families that are part of the treatment and control groups, as well as PHA and mobility-related services staff, and landlords of properties participating in the HCV program. Data will be gathered through a variety of methods including informational interviews and discussions, direct observation, and analysis of administrative records.

Respondents: Public housing agency administrators/staff/contractors managing or implementing the mobility-related services, families enrolled in the HCV Mobility Demonstration, and owners of properties that accept Housing Choice Vouchers.

Estimated Number of Respondents: This data collection will affect no more than 12,400 respondents: 12,000 families participating in the HCV Mobility Demonstration (study participants) will complete a baseline survey, 200 study participants will complete follow up interviews, 100 public housing agency/housing mobility services provider staff will complete interviews, 20 public housing agency/housing mobility services provider staff will participate in cost study data collection activities, and 80 landlords that accept Housing Choice Vouchers will complete interviews.

Estimated Time per Response: The estimated time per response is 1.5–3 hours, depending on the data collection instrument and respondent.

Frequency of Response: The frequency of response is 1 survey completion or 1 interview.

Estimated Total Annual Burden Hours: The total annual burden of this information collection is 24,760 hours.

Estimated Total Annual Cost: The total annual cost for this information collection is $201,821.

Respondent's Obligation: Voluntary.

Legal Authority: The data collection is conducted under Title 12, United States Code, Section 1701z and Section 3507 of the Paperwork Reduction Act of 1995, 44, U.S.C., 35, as amended.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Study Participant Enrollment and Baseline Survey	12,000	1	1	2	24,000	[1] $7.39	$177,360
Study Participant Follow Up Interviews	200	1	1	1.5	300	7.39	2,217
PHA Staff/Mobility Services Provider Interviews	100	1	1	3	300	[2] 52.94	15,882
Cost Study Data Collection Activities with PHA staff	20	1	1	2	40	[3] 52.94	2,118
Landlord Interview	80	1	1	1.5	120	[4] 35.37	4,244
Total	12,400				24, 760		201,821

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

The General Deputy Assistant Secretary for Policy Development and Research, Todd Richardson, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Nacheshia Foxx,

Federal Liaison for the Department of Housing and Urban Development.

[FR Doc. 2021–01454 Filed 1–22–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7040–N–01; OMB Control No. 2577–0218]

60-Day Notice of Proposed Information Collection: Indian Housing Block Grant (IHBG) Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 26, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (Room 3178), Washington, DC 20410; telephone 202–708–3000, extension 3374, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Rogers.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Indian Housing Block Grant Program.

OMB Approval Number: 2577–0218.

Type of Request: Revision of a currently approved collection.

Form Numbers: HUD–52737; HUD–4117; HUD–4119; HUD–52736–A; HUD–52736–B; HUD–53246; HUD–53247; HUD–XXXX.

Description of the need for the information and proposed use: The purpose of this notice is to solicit public comment on forms associated with the Indian Housing Block Grant Formula program (IHBG Formula) and the Indian Housing Block Grant Competitive program (IHBG Competitive). The Department of Housing and Urban Development's Office of Native American Programs is responsible for managing and evaluating the programs and for annual Congressional reporting.

Respondents: Native American Tribes, Alaska Native Villages and Corporations, and Tribally Designated Housing Entities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response:

Information collection	Form name	Number of respondents	Number of responses per respondent	Total annual responses	Burden hour/ minutes per response	Total annual burden
HUD–52737	IHBG Formula IHP/APR	792	2	1,584.00	62.00	98,208.00
HUD–4117	Formula Response Form	792	1	792.00	2.00	1,584.00
HUD–4119	Formula Challenge Form	15	1	15.00	150.00	2,250.00
HUD–52736–A	Depository Agreement (Banker)	394	1	394.00	0.25	98.50
HUD–52736–B	Depository Agreement (Broker)	394	1	394.00	0.25	98.50
HUD–53246	IHBG Cost Summary	54	1	54.00	2.00	108.00
HUD–53247	IHBG Implementation Schedule	54	1	54.00	2.00	108.00

[1] Households participating in the HCV Demonstration will range widely in employment position and earnings. We have estimated the hourly wage based on the annual average household income for HCV holders as of 2019 (based on 2010 Census data) accessed January 8, 2021 at *https://www.huduser.gov/portal/datasets/picture/about.html.*

[2] The estimated cost burden for PHA and mobility services provider staff participating in interviews is based on the average compensation for all local and state government employees as of September 2020 ($52.94), accessed online January 8, 2021 at: *https://www.bls.gov/news.release/pdf/ecec.pdf.*

[3] The estimate cost burden of Cost Study Data collection by PHA staff is based on the average compensation for all local and state government employees as of September 2020 ($52.94), accessed online January 8, 2021 at: *https://www.bls.gov/news.release/pdf/ecec.pdf.*

[4] Estimated cost burden for property owners is based on average hourly and weekly earnings of all employees on private nonfarm payrolls by industry sector, seasonally adjusted. U.S. Bureau of Labor Statistics. November 2020(P) for all professional and business services ($35.37). *https://www.bls.gov/news.release/empsit.t19.htm.*

Information collection	Form name	Number of respondents	Number of responses per respondent	Total annual responses	Burden hour/ minutes per response	Total annual burden
HUD–XXXX	IHBG Competitive APR	54	1	54.00	32.00	1,728.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 8, 2021.

Merrie Nichols-Dixon,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2021–01480 Filed 1–22–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–04]

30-Day Notice of Proposed Information Collection: Housing Counseling Program—Application for Approval as a Housing Counseling Agency; OMB Control No.: 2502–0573

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* February 24, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/Start Printed Page 15501PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on November 20, 2020 at 85 FR 74369.

A. Overview of Information Collection

Title of Information Collection: Housing Counseling Program—Application for Approval as a Housing Counseling Agency.

OMB Approval Number: 2502–0573.

OMB Expiration Date: 01/31/2021.

Type of Request: Revision of a currently approved collection.

Form Number: Form HUD–9900, Application for Approval as a Housing Counseling Agency; HUD–9900A, Screening for Ineligible Participants.

Description of the need for the information and proposed use: The Office of Housing Counseling is responsible for administration of the Department's Housing Counseling Program, authorized by Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701w and 1701x). The Housing Counseling Program supports the delivery of a wide variety of housing counseling services to homebuyers, homeowners, low- to moderate-income renters, and the homeless. The primary objective of the program is to educate families and individuals in order to help them make smart decisions regarding improving their housing situation and meeting the responsibilities of tenancy and homeownership, including through budget and financial counseling. Counselors also help borrowers avoid predatory lending practices, such as inflated appraisals, unreasonably high interest rates, unaffordable repayment terms, and other conditions that can result in a loss of equity, increased debt, default, and possible foreclosure. Counselors may also provide reverse mortgage counseling to elderly homeowners who seek to convert equity in their homes to pay for home improvements, medical costs, living expenses or other expenses. Additionally, housing counselors may distribute and be a resource for information concerning of fair housing and fair lending requirements of the Fair Housing Act, as well as finding units accessible to persons with disabilities. The Housing Counseling Program is instrumental to achievement of HUD's mission. The Program's far-reaching effects support numerous departmental programs, including Federal Housing Administration (FHA) single family housing programs.

Approximately 1,700 HUD-participating agencies provide housing counseling services nationwide currently. Of these, approximately 975 have been directly approved by HUD. HUD maintains a list of these agencies so that individuals in need of assistance can easily access the nearest HUD-approved Housing Counseling Agency (HCA) via HUD's website, an automated 1800 Hotline, or a smart phone application. Form HUD–9900, Application for Approval as a Housing Counseling Agency, is necessary to make sure that people who contact a HUD-approved HCA can have confidence they will receive quality service and these agencies meet HUD requirements for approval.

Respondents (*i.e.* affected public): Not-for-profit institutions.

Estimated Number of Respondents: 700.

Estimated Number of Responses: 700.

Frequency of Response: 1.
Average Hours per Response: 8.1667.
Total Estimated Burden: 5,717 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to

(5) respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–01503 Filed 1–22–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7040–N–03; OMB Control No. 2577–0192]

60-Day Notice of Proposed Information Collection: Requirements for Designating Housing Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 26, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Rogers.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Requirements for Designating Housing Projects.

OMB Approval Number: 2577–0192.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The information collection burden associated with designated housing is required by statute. Section 10 of the Housing Opportunity and Extension Act of 1996 modified Section 7 of the U.S. Housing Act of 1937 to require Public Housing Agencies (PHAs) to submit a plan for HUD approval before a project(s) can be designated as either elderly only, disabled only, or elderly and disabled. In this plan, PHAs must document why the designation is needed and provide the following information:

1. Description of the designated housing plan;
2. Justification for the designation;
3. Availability of alternative housing resources for the non-designated population(s);
4. Impact on the availability of accessible housing;
5. A statement that existing tenants in good standing will not be evicted;
6. A statement of the resources that will be made available if the PHA offers voluntary relocation benefits; and
7. Information describing how the DHP is consistent with any outstanding court orders, lawsuits, investigations, Voluntary Compliance Agreements (VCAs), Conciliation Agreements, or Letters of Findings or Determinations, etc., including for example, actions under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Age Discrimination Act, the Fair Housing Act, or the Americans with Disabilities Act.

Respondents (*i.e. affected public*): State, or Local Government.

Estimated Number of Respondents: 18.

Estimated Number of Responses: 1.

Frequency of Response: On Occasion.

Average Hours per Response: 15 hours.

Total Estimated Burdens: 270 hours.

The previous estimation of 585 annual burden hours has been reduced to 270. This change is based on the average number of Plans submitted between Calendar Years 2017, 2018 and 2019. HUD expects that the number of respondents will continue to decline because of the trend in Public Housing Agencies (PHAs) repositioning their developments and moving out of the public housing program.

The national average PHA staff salary = $51,000 [1] per year or $24.00 per hour. The calculation for costs is as follows: 18 PHAs × 15 hours = 270 hours × $24 [2] = $6,480.

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[1] ziprecruiter.com, *https://www.ziprecruiter.com/Salaries/Public-Housing-Authority-Salary*

[2] Computed Hourly Rates of Pay Using the 2,087-Hour Divisor, *https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/computing-hourly-rates-of-pay-using-the-2087-hour-divisor/*

Information collection	Number of respondents	Average number of reponses per respondent	Total annual responses	Burden hours/minutes per response	Tota hours	Hourly cost	Total annual cost
2577–0192	18	1	18	15	270	$24.00	$6,480

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 8, 2021.

Merrie Nichols-Dixon,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2021–01489 Filed 1–22–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7041–N–03]

60-Day Notice of Proposed Information Collection: Evaluation of the HUD–DOJ Pay for Success Permanent Supportive Housing Demonstration; OMB Control No.: 2528–0319

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comments from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 26, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone (202) 402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone (202) 402–5535 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Evaluation of the HUD–DOJ Pay for Success Permanent Supportive Housing Demonstration.

OMB Approval Number: 2528–0319.

Type of Request: Revision or extension of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Departments of Housing and Urban Development (HUD) and Justice (DOJ) entered into an interagency collaboration that combines DOJ's mission to promote safer communities by focusing on the reentry population with HUD's mission to end chronic homelessness. This collaboration resulted in the HUD–DOJ Pay for Success Permanent Supportive Housing Demonstration with $8.68M awarded to seven communities to develop supportive housing for persons cycling between the jail or prison systems and the homeless service systems using pay for success (PFS) as a funding mechanism. HUD announced seven grantees from across the country in June 2016. As of August 2020, six grantee communities remain. The PFS Demonstration grant supports activities throughout the PFS lifecycle, including feasibility analysis, transaction structuring, and outcome evaluation and success payments, with each grantee receiving funds for different stages in the PFS lifecycle. Through the national evaluation, which is funded through an interagency agreement between HUD and DOJ and managed by HUD's Office of Policy Development and Research, HUD–DOJ seek to assess whether PFS is a viable model for scaling supportive housing to improve outcomes for a re-entry population. The main goal of the evaluation is to learn how the PFS model is implemented in diverse settings with different structures, populations, and community contexts. The Urban Institute has been conducting a multi-disciplinary, multi-method approach to ''learn as we do'' and meet the key objectives of the formative evaluation. To understand project implementation, the evaluation includes data collection on both the time that project partners dedicate to each PFS project as well as PFS partner perceptions and interactions and community-level changes that may benefit the target population. This information collection request is for an ongoing time survey and an annual partnership web survey. The time survey will be used to assess staff time spent on development of each PFS project throughout the different lifecycle phases and the partnership survey will be used to document partner perceptions and interactions and community-level changes that may benefit the target population.

Respondents: PFS grantee staff and other project stakeholders.

Estimated Number of Respondents: The annual web-based partnership survey will have up to 170 respondents across all 6 Demonstration sites. The quarterly web-based time survey will have up to 40 respondents across all sites.

Estimated Time per Response: The response time for the annual web-based partnership survey is .25 hour. The response time for the quarterly web-based time survey is 1 hour.

Frequency of Response: The annual web-based partnership survey will be administered once annually. The web-based time survey will be administered four times annually.

Estimated Total Annual Burden Hours: The total annual burden for this information collection is 202.50 hrs.

Estimated Total Annual Cost: The total annual cost for this information collection is $5,400.68.

Respondent's Obligation: Voluntary.

Legal Authority: The data collection is conducted under Title 12, United States Code, Section 1701z and Section 3507 of the Paperwork Reduction Act of 1995, 44, U.S.C., 35, as amended.

Information collection	Number of respondents	Frequency of response	Burden hour per response	Annual burden hours	Hourly cost per response	Total cost
HUD–DOJ PFS Key Project Partners (Annual web-based partnership survey)	170	1	0.25	42.5	[1] $26.67	$1,133.48
HUD–DOJ PFS Key Project Partners (Quarterly time survey)	40	4	1.0	160	26.67	4,267.20
Total	210			202.5		5,400.68

[1] The typical key project partner role is either a management or support role. The estimate uses the average of the most recent (May 2019) Bureau of Labor Statistics, Occupational Employment Statistics median hourly wages for the labor categories Social and Community Services Manager (11–9151) and Community and Social Service Specialist, All Other (21–1099). To estimate cost burden to project partner respondents, we use an average of the occupations listed or $26.67.

Respondent	Occupation	SOC code	Median hourly wage rate	Average (median) hourly wage rate
HUD–DOJ PFS Key Project Partners.	(1) Social and Community Services Manager (2) Community and Social Service Specialist, All Other	(1) 11–9151 (2) 21–1099	(1) $32.28 (2) 21.05	26.67

Source: Occupational Employment Statistics, accessed online January 11, 2021 at *http://www.bls.gov/oes/current/oes_stru.htm*.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

The General Deputy Assistant Secretary for Policy Development and Research, Todd Richardson, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Nacheshia Foxx,

Federal Register Liaison, Department of Housing and Urban Development.

[FR Doc. 2021–01463 Filed 1–22–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–06; OMB Control No.: 2502–0422]

30-Day Notice of Proposed Information Collection: Mortgage Record Change

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment..

DATES: *Comments Due Date: February 24, 2021.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/Start* Printed Page 15501PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for

approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 1, 2020 at 85 FR 33189.

A. Overview of Information Collection

Title of Information Collection: Mortgage Record Change.

OMB Approval Number: 2502–0422.

Type of Request: Extension.

Form Number: 92080 (FHA Connection).

Description of the need for the information and proposed use: Servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages. The Mortgage Record Change information is used by FHA-approved mortgagees to comply with HUD requirements for reporting the sale of a mortgage between investors and/or the transfer of the mortgage servicing responsibility, as appropriate.

Respondents (i.e. affected public): Not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses: 3,500,000.

Frequency of Response: On occasion at sale or transfer.

Average Hours per Response: .1.

Total Estimated Burdens: 350,000.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(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.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–01520 Filed 1–22–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–05; OMB Control No.: 2502–0524]

30-Day Notice of Proposed Information Collection: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: February 24, 2021.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/Start Printed Page 15501PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 17, 2020 at 85 FR 58068.

A. Overview of Information Collection

Title of Information Collection: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents.

OMB Approval Number: 2502–0524.

Type of Request: Revision of currently approved collection.

Form Number: HUD–92901, HUD–92902, HUD–92051, HUD–92561, HUD–92800.5b, HUD–92900–A, HUD–92300, HUD–1, HUD–1a, Fannie Mae (FNMA)-1009, FNMA–1025, FNMA–1003, FNMA–1004, FNMA–1004c, FNMA–1073, HUD–92541, HUD–92544, NPMA–99A, NPMA–99B

Description of the need for the information and proposed use: The Home Equity Conversion Mortgage (HECM) program is the Federal Housing Administration's (FHA) reverse mortgage program that enables seniors who have equity in their homes to withdraw a portion of the accumulated equity. The intent of the HECM Program is to ease the financial burden on elderly homeowners facing increased health, housing, and subsistence costs at a time of reduced income. The currently approved information collection is necessary to screen mortgage insurance applications to protect the FHA insurance fund and the interests of consumers and potential borrowers. Specific forms and related documents are needed to determine the eligibility of the borrower and proposed mortgage transaction for FHA's insurance endorsement. The model HECM Adjustable Rate Note has been revised to align with FHA's transition from the London InterBank Offered Rate (LIBOR) index to the Secured Overnight Financing Rate (SOFR) index, which includes, but is not limited to, new definitions and replacement index language for future adjustable interest rate index transition events.

HUD also proposes to strengthen the HECM for Purchase property eligibility requirements by requiring inspection documentation for newly built properties that will serve as collateral for HECM financing. Currently, the HECM for Purchase program requires mortgagees to submit a Certificate of Occupancy, or its equivalent, as evidence that the property is complete and habitable as a condition of FHA insurance. In the near future, mortgagees may be required to complete and submit the following forms to FHA: (1) Form HUD–92541, Builder's

Certification of Plans, Specifications, and Site; (2) Form HUD–92544, Warranty of Completion of Construction; (3) Form HUD–NPMA–99–A, Subterranean Termite Protection Builder's Guarantee; and (4) Form HUD–NPMA–99–B, New Construction Subterranean Termite Service Record. These forms are currently required by FHA for maximum financing for FHA's Title II Single Family forward mortgage programs and will align both the reverse and forward mortgage programs to ensure the property meet's FHA's minimum property standards while ensuring the home is safe, sound, and secure for the HECM borrower.

Respondents (i.e., affected public): Business or other for profit.

Estimated Number of Respondents: 2,375.

Estimated Number of Responses: 59,375.

Frequency of Response: Occasionally.

Average Hours per Response: 2.54 hours.

Total Estimated Burdens: 116,398.75.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(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.

HUD encourages interested parties to submit comments in response to the proposed changes.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–01515 Filed 1–22–21; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1238]

Certain Plant-Derived Recombinant Human Serum Albumins (''rHSA'') and Products Containing Same; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 16, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of Ventria Bioscience Inc. of Junction City, Kansas. Supplements to the complaint were filed on December 16, and 22, 2020. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain plant-derived recombinant human serum albumins (''rHSA'') and products containing same by reason of infringement of certain claims of U.S. Patent No. 10,618,951 (''the '951 patent''); and U.S. Patent No. 8,609,416 (''the '416 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complaint also alleges violations of section 337 based on the importation into the United States, or in the sale of, certain plant-derived recombinant human serum albumins (''rHSA'') and products containing same by reason of false designation of origin, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 14, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3 and 11–13 of the '951 patent and claims 1–3, 5–7, 10, 12, 18–20, and 22–25 of the '416 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or in the sale of, certain products identified in paragraph (2) by reason of false designation of origin.

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is: Plant-derived recombinant human serum albumins (''rHSA'') and products containing the same, such as lyophilized powders and liquid suspensions primarily containing rHSA along with naturally-occurring plant expression by-products, such as plant heat shock proteins and/or plant fatty acids, as well as cell culture media supplements formulated with such rHSA products.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Ventria Bioscience Inc., 2718 Industrial Drive, Junction City, Kansas 66441.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Wuhan Healthgen Biotechnology Corp., No. 666 Gaoxin Avenue, East Lake High-Tech Development Zone, Wuhan, China, 430075

ScienCell Research Laboratories, Inc., 1610 Faraday Avenue, Carlsbad, California 92008

Aspira Scientific, Inc., 521 Cottonwood Drive, Suite 112, Milpitas, California 95035

eEnzyme LLC, 963 Featherstone Street, Gaithersburg, Maryland 20879

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 15, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–01439 Filed 1–22–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–636 and 731–TA–1470 (Final)]

Wood Mouldings and Millwork Products From China; Revised Schedule for the Subject Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: January 13, 2021.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 12, 2020, the Commission established a schedule for the conduct of the final phase of the subject investigations (85 FR 54593, September 2, 2020). In light of the federal holiday on January 20, 2021, the Commission is revising the final comments deadline to no later than 10 a.m., January 21, 2021.

For further information concerning this proceeding, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 19, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–01532 Filed 1–22–21; 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: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Cellular Communications Infrastructure Systems, Components Thereof, and Products Containing Same, DN 3525;* 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 Ericsson Inc. and Telefonaktiebolaget LM Ericsson on January 15, 2021. 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 cellular communications infrastructure systems, components thereof, and products containing same. The complaint names as respondents: Samsung Electronics Co. Ltd. of Korea and Samsung Electronics America, Inc. of Ridgefield Park, NJ. The complainant requests that the Commission issue a limited

exclusion order, a cease and desist order 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. 3525'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). 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: January 19, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–01504 Filed 1–22–21; 8:45 am]

BILLING CODE 7020–02–P

[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.*

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1239]

Certain Gabapentin Immunoassay Kits and Test Strips, Components Thereof, and Methods Therefor; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 2, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of ARK Diagnostics, Inc. of Fremont, California. A supplement to the complaint was filed on December 2, 2020 and an amended complaint was filed on December 23, 2020. The complaint, as amended, alleges violations of section 337 based upon 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 by reason of infringement of certain claims of U.S. Patent No. 8,828,665 (''the '665 patent'') and U.S. Patent No. 10,203,345 (''the '345 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained

by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 19, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3, 6, 7, 9, 14, 17, 18, 20, and 21 of the '665 patent; and claims 1, 2, 7, 8, 11, 12, 19, 20, 26, and 27 of the '345 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''gabapentin immunoassays kits, gabapentin-specific test strips, multi-drug test kits and strips that test for gabapentin among other drugs, and components of such kits and test strips'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

ARK Diagnostics, Inc., 48089 Fremont Boulevard, Fremont, CA 94538.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hangzhou AllTest Biotech Co., Ltd., No. 550, Yinhai Street, Hangzhou Economy and Technology Development Area, Hangzhou, China 210018.

Shanghai Chemtron Biotech Co., Ltd., No. 518, Qingdai Rd., International Medical Park, Pudong 201318, Shanghai, China.

Chemtron Biotech Co., Ltd., 9425 Brown Deer Road, Suite B, San Diego, CA 92121.

Zhejiang Orient Gene Biotech Co., Ltd., #3787 East Yangguang Ave., Dipu St., Anji 313300, Huzhou, Zhejiang, China.

Healgen Scientific, LLC, 3818 Fuqua Street, Houston, TX 77047.

Kappa City Biotech, SAS, 32 Rue Danton, 03100 Montlucon, France.

12PanelMedical, Inc., 846 Wee Burn Street, Apt. E306, Sarasota, FL 34243.

Acro Biotech, Inc., 9500 7th Street, Unit M, Rancho Cucamonga, CA 91730.

AlcoPro, Inc., 2547 Sutherland Ave., Knoxville, TN 37919.

American Screening, LLC, 9742 St. Vincent Ave., Ste. 100, Shreveport, LA 71106.

Confirm Biosciences, Inc., 10123 Carroll Canyon Road, San Diego, CA 92131.

Mercedes Medical, LLC, 12210 Rangeland Parkway, Lakewood Ranch, FL 34211.

TransMed Co., LLC, 1887 McFarland Parkway, Alpharetta, GA 30005.

Transmetron, Inc., 1476 S Major Street (50 East), Salt Lake City, UT 84115.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 19, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–01548 Filed 1–22–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On January 14, 2021, the Department of Justice lodged a proposed consent decree with the United States District Court for the Middle District of North Carolina in *United States* v. *Pilkington North America, Inc.,* Civil Action No. 1:21–cv–00040.

The United States filed a complaint under Clean Air Act (CAA) Sections 113(b) and 167, 42 U.S.C. 7413(b) and 7477, seeking injunctive relief for the Defendant's alleged failure to (1) obtain appropriate permits before modifying and subsequently operating Furnace No. 1 at its glass manufacturing facility in Laurinburg, North Carolina, and (2) install and employ the best available control technology (BACT) to control emissions of nitrogen oxides (NO_X), sulfur dioxide (SO_2), and particulate matter (PM) from Furnace No. 1, as required by the CAA. The United States simultaneously lodged a consent decree that would settle the claims in the complaint.

Under the proposed decree, the Defendant will have to (1) install equipment on Furnace No. 1 to control emissions of NO_X, SO_2, and PM from the furnace; (2) install equipment on Furnace No. 1 to continuously monitor NO_X and SO_2 emissions from the furnace and perform annual stack tests to monitor PM emissions from the furnace; (3) meet interim and final limits for emissions of NO_X, SO_2, and PM from Furnace No. 1; (4) incorporate certain requirements of the decree into a permit; and (5) perform a project to mitigate excess PM emissions from the Laurinburg facility.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Pilkington North America, Inc.,* D.J. Ref. No. 90–5–2–1–10328. All comments must be

submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $21.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–01436 Filed 1–22–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On January 15, 2021, the Department of Justice and the State of California on behalf of the California Department of Toxic Substances Control (''DTSC'') lodged a proposed Consent Decree with the United States District Court for the Central District of California pertaining to environmental contamination at the Dense Non-Aqueous Phase Liquid Operable Unit (''DNAPL OU'') of the Montrose Chemical Corp. Superfund Site in Los Angeles County, California. This proposed Consent Decree was lodged in the case *United States of America and State of California* vs. *Montrose Chemical Corp. of California et al.,* Civil Action No. 2:90–cv–03122 DOC (C.D. Cal.); it resolves certain of the claims in that case.

The proposed Consent Decree, titled in full ''Partial Consent Decree (Montrose Superfund Site—Dense Non-Aqueous Phase Liquid (DNAPL) Operable Unit)'', resolves certain claims or potential claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606, 9607, as well as certain potential state law claims, in connection with environmental contamination at the DNAPL OU. The settling defendants are TFCF America, Inc.; Bayer CropScience Inc.; Montrose Chemical Corporation of California; and Stauffer Management Company LLC. The Consent Decree requires the settling defendants to perform the remedy at the DNAPL OU, which consists primarily of in-situ thermal treatment (electrical resistance heating) and soil vapor extraction with an associated land use covenant, and to make a payment of $340,000.00 toward the United States' unreimbursed DNAPL OU past costs and a payment of $61,798.11 towards DTSC's DNAPL OU past costs. The proposed Consent Decree also requires the settling defendants to pay the United States' and DTSC's future response costs for overseeing the work the settling defendants will be performing at the DNAPL OU.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and State of California* vs. *Montrose Chemical Corp. of California et al,* D.J. Ref. No. 90–11–3–511. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.usdoj.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $133.00 (25 cents per page reproduction cost) for the Consent Decree, payable to the United States Treasury. For a paper copy without the appendices and signature pages, the cost is $21.50.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–01549 Filed 1–22–21; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–21–0001; NARA–2021–012]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by March 11, 2021.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to

dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Agriculture, Forest Service, Environmental Policies and Procedures (DAA–0095–2020–0001).
2. Department of Health and Human Services, Administration for Children and Families, Unaccompanied Alien Children and Refugee Programs (DAA–0292–2019–0009).
3. Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response, Information Exchange System (DAA–0468–2019–0003).
4. Department of Health and Human Services, National Institutes of Health, Non Employee Fellowship Records (DAA–0443–2020–0001).
5. Department of Health and Human Services, National Institutes of Health, Visiting Fellow and Scientist Work Authorization (DAA–0443–2020–0002).
6. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Certificates of Confidentiality (DAA–0511–2021–0001).
7. Department of Homeland Security, U.S. Citizenship and Immigration Services, American Baptist Church Settlement Records (DAA–0566–2021–0001).
8. Department of Homeland Security, U.S. Customs and Border Protection, U.S. Citizen Encounter Photographs (DAA–0568–2019–0002).
9. Department of Homeland Security, U.S. Customs and Border Protection, Customs-Trade Partnership Against Terrorism Records (DAA–0568–2019–0009).
10. Department of Justice, Bureau of Prisons, Sex Offender Data System (DAA–0129–2019–0006).
11. Department of the Treasury, Internal Revenue Service, Qualified Intermediary Application and Account Management System (DAA–0058–2020–0003).
12. Federal Communications Commission, Enforcement Bureau, EEO Audits (DAA–0173–2020–0003).
13. General Services Administration, Agency-wide, Professional Services To and With Other Agencies (DAA–0269–2020–0005).
14. General Services Administration, Agency-wide, Employee Training Records (DAA–0269–2020–0010).
15. National Archives and Records Administration, Government-wide, GRS 4.2—Information Access and Protection Records (DAA–GRS–2020–0002).
16. National Archives and Records Administration, Government-wide, GRS 5.6—Security Management Records (DAA–GRS–2021–0001).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2021–01453 Filed 1–22–21; 8:45 am]

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NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 24, 2021. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of

Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2021–008

1. *Applicant:* Michael Gooseff, 4001 Discovery Dr., Boulder, CO 80303.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Areas. The applicant and agents would enter ASPA 131, Canada Glacier, Lake Fryxell, to continue operation of a previously installed, continuously recording stream gauge station, perform maintenance, conduct stream flow measurements and collect water quality samples near the stream gauge site. The applicant would collect water quality samples of the melt-water of the Canada Glacier and along the length of the stream to study in-stream biogeochemical processes. The applicant would collect a maximum of five moss samples per year using a 3 cm corer to a depth of about 3 cm and a maximum of five soil samples of approximately 200 g per year from which to extract nematodes. Photography, LIDAR, and other survey and monitoring techniques may be used to detect changes in the stream bed and algal mat distribution over time, and/or to monitor the change in the stream gauge system through time. The applicant and agents would also to enter ASPA 172, Lower Taylor Glacier and Blood Falls, to continue measurements of the Santa Fe Stream including: Stream-flow using velocity meters; pH, temperature, and conductivity via meters; and collection of water quality samples. The collection of water from the Blood Falls area would occur on the glacial moraine, not the glacier itself, and the sample would be small (<1 L) and comprised of both brine reservoir discharge (when present) and surface ice melt-water.

Location: ASPA 131, Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land; ASPA 172, Lower Taylor Glacier and Blood Falls, Taylor Valley, McMurdo Dry Valleys, Victoria Land; McMurdo Dry Valleys, Antarctica.

Dates of Permitted Activities: February 28, 2021–February 28, 2026.

Permit Application: 2021–009

2. *Applicant:* Daniel Costa, Ecology and Evolutionary Biology Department, University of California Santa Cruz, 115 McAllister Way, Santa Cruz, CA 95062.

Activity for Which Permit is Requested: Take, Harmful Interference, Enter Antarctic Specially Protected Areas, Import into USA. The applicant proposes to study the foraging behavior, habitat utilization, and physiology of leopard seals, and potentially additional Antarctic seal species, near Cape Shirreff in the Antarctic Peninsula. Additional seal species could include: Crabeater seals, Weddell seals, Antarctic fur seals, Ross seals, and southern elephant seals. The applicant would capture and tag 10–15 seals of each species, in each field season. Seals would be sedated and anesthetized during tagging and biological sample collection procedures. The tags to be attached to the seals with marine epoxy include a combined time-depth recorder and GPS receiver and a separate VHF radio tag. Other procedures would include: Flipper tagging, dye marking, collecting blood samples, measuring blood volume, measuring girth and length, and determining body composition by morphometric measurements. These procedures are currently authorized under National Marine Fisheries Service Marine Mammal Protection Act Permit No. 19439.

Location: ASPA 149, Cape Shirreff, Livingston Island, South Shetland Islands, Antarctic Peninsula.

Dates of Permitted Activities: April 1, 2021–December 31, 2023.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–01471 Filed 1–22–21; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90939; File No. SR–FINRA–2019–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 2, To Establish a Corporate Bond New Issue Reference Data Service

January 15, 2021.

I. Introduction

On March 27, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 establish a new issue reference data service for corporate bonds (''New Issue Reference Data Service'').[3] Pursuant to the proposal, FINRA would require that underwriters report to FINRA a number of data elements for new issues in corporate debt securities and FINRA would disseminate such data to the public upon receipt.

On December 4, 2019, the Commission, acting through authority delegated to the Division of Trading and Markets (''Division''),[4] approved the proposed rule change, as modified by Amendment No. 2 (''Approval Order'').[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission published notice of the proposed rule change in the **Federal Register** on April 8, 2019. *See* Exchange Act Release No. 85488 (Apr. 2, 2019), 84 FR 13977 (''Notice''). On May 22, 2019, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. *See* Exchange Act Release No. 85911, 84 FR 24839 (May 29, 2019). On July 1, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act, 15 U.S.C. 78s(b)(2)(B), to determine whether to approve or disapprove the proposed rule change. *See* Exchange Act Release No. 86256, 84 FR 32506 (Jul. 8, 2019). On October 3, 2019, FINRA filed Partial Amendment No. 1 to the proposed rule change, which was subsequently withdrawn on the same day due to a non-substantive administrative error. On October 3, 2019, FINRA filed partial Amendment No. 2 to the proposed rule change (''Amendment No. 2''). On October 4, 2019, the Commission issued a notice of filing of Amendment No. 2 to the proposed rule change and, pursuant to Section 19(b)(2) of the Act, the Commission designated a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change. *See* Exchange Act Release No. 87232, 84 FR 54712 (Oct. 10, 2019).

[4] 17 CFR 200.30–3(a)(12).

[5] *See* Exchange Act Release No. 87656, 84 FR 67491 (Dec. 10, 2019).

On December 18, 2019, Bloomberg, L.P. (''Bloomberg'' or ''Petitioner'') filed a petition for review of the Approval Order (''Petition for Review''). Pursuant to Commission Rule of Practice 431(e), the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.[6] On February 14, 2020, the Commission issued a scheduling order, pursuant to Commission Rule of Practice 431, granting the Petition for Review of the Approval Order and providing until March 16, 2020, for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.[7] On March 16, 2020, FINRA submitted a written statement in support of the Approval Order.[8] On March 17, 2020, Petitioner submitted a corrected written statement in opposition to the Approval Order.[9] On April 17, 2020, Petitioner submitted a Motion for Leave to Adduce Additional Evidence pursuant to Rule 452 of the Commission's Rules of Practice,[10] attaching the declarations of Mark Flatman and David Miao of Bloomberg, L.P.[11] On April 24, 2020, FINRA submitted an Opposition to the Bloomberg, L.P. Motion.[12] On April 29, 2020, Petitioner submitted a Reply in Support of the Bloomberg, L.P. Motion.[13]

In response to the Petition for Review, the Commission has conducted a de novo review of FINRA's proposal, giving careful consideration to the entire record—including FINRA's amended proposal, the Petition for Review, and all comments and statements submitted—to determine whether the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association. Under Section 19(b)(2)(C) of the Act, the Commission must approve the proposed rule change of a self-regulatory organization (''SRO'') if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the applicable rules and regulations thereunder; if it does not make such a finding, the Commission must disapprove the proposed rule change.[14] Additionally, under Rule 700(b)(3) of the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [15] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.[16] Any failure of a self-regulatory organization to provide the information required by Rule 19b–4 and elicited on Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the rules and regulations thereunder that are applicable to the self-regulatory organization.[17]

The Commission has considered whether the proposal is consistent with the Act, including Section 15A(b)(6) of the Act, which requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the association; [18] and Section 15A(b)(9) of the Act, which requires that the rules of a national securities association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[19]

For the reasons discussed further herein, FINRA has met its burden to show that the proposed rule change is consistent with the Act, and this order sets aside the Approval Order and approves FINRA's proposed rule change, as amended. In particular, the Commission concludes that the record before the Commission demonstrates that FINRA's New Issue Reference Data Service should promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in newly issued corporate bonds, consistent with Section 15A(b)(6) of the Act. In addition, the record demonstrates that the New Issue Reference Data Service should not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Therefore, and as explained further below, the Commission finds the proposal consistent with Sections 15A(b)(6) and 15A(b)(9) of the Act.

II. Summary of the Proposal

FINRA proposes to establish the New Issue Reference Data Service, which would provide a central depository for public dissemination of new issue corporate bond reference data. FINRA proposes to amend Rule 6760 (Obligation to Provide Notice) [20] to require that underwriters who are FINRA members and subject to Rule 6760 [21] to report to FINRA a number of

[6] 17 CFR 201.431(e). *See* Letter to Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA (Dec. 12, 2019) (providing notice of receipt of notice of intention to petition for review of delegated action and stay of order), available at *https://www.sec.gov/rules/sro/finra/2019/34-87656-acknowledgement-letter.pdf*.

[7] *See* Securities Exchange Act Release No. 88214, 85 FR 9887 (Feb. 20, 2020).

[8] *See* FINRA's Statement in Support of Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data (''FINRA Statement'').

[9] *See* Corrected Statement of Bloomberg, L.P. in Opposition to Approval of the Proposed Rule Change (''Petitioner Statement''). Petitioner's original written statement in opposition to the Approval Order was submitted on March 16, 2020. Petitioner stated that it submitted a corrected version on March 17, 2020 in order to correct non-substantive typographical errors and incorrect cross-references.

[10] 17 CFR 201.452.

[11] *See* Motion of Bloomberg, L.P. for Leave to Adduce Additional Evidence (''Petitioner Motion''). *See also* Declaration of Mark Flatman and Declaration of David Miao (collectively, ''Declarations'').

[12] *See* FINRA's Opposition to Motion of Bloomberg, L.P. for Leave to Adduce Additional Evidence (''FINRA Opposition'').

[13] *See* Reply of Bloomberg, L.P. in Support of its Motion for Leave to Adduce Additional Evidence. The Commission believes that allowing Petitioner to submit additional evidence would further the Commission's ability to understand the arguments presented by both parties and their relation to FINRA's proposal. Accordingly, the Commission grants the Petitioner Motion. The Declarations are considered below in Section III.A and Section III.C.

[14] 15 U.S.C. 78s(b)(2)(C).

[15] 17 CFR 201.700(b)(3).

[16] *Id.*

[17] *See id. See also* 17 CFR 240.19b–4.

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 15 U.S.C. 78*o*–3(b)(9).

[20] FINRA would amend the title of the Rule to ''Obligation to Provide Notice and Dissemination of Corporate Debt Security New Issue Reference Data.''

[21] FINRA would amend Rule 6760(a)(1) to require that underwriters subject to the rule report required information for the purpose of providing market participants in the corporate debt security markets with reliable and timely new issue reference data to facilitate the trading and settling of these securities, in addition to the current purpose of

Continued

data elements, including some already specified by the rule, for new issues in Corporate Debt Securities as defined in FINRA's rules.[22] Proposed Rule 6760(b)(2) would require that, in addition to the information required by Rule 6760(b)(1),[23] for a new issue in a Corporate Debt Security, excluding bonds issued by religious organizations or for religious purposes, the following information must be reported, if applicable: (A) The International Securities Identification Number (ISIN); (B) the currency; (C) the issue date; (D) the first settle date; (E) the interest accrual date; (F) the day count description; (G) the coupon frequency; (H) the first coupon payment date; (I) a Regulation S indicator; (J) the security type; (K) the bond type; (L) the first coupon period type; (M) a convertible indicator; (N) a call indicator; (O) the first call date; (P) a put indicator; (Q) the first put date; (R) the minimum increment; (S) the minimum piece/denomination; (T) the issuance amount; (U) the first call price; (V) the first put price; (W) the coupon type; (X) rating (TRACE Grade); (Y) a perpetual maturity indicator; (Z) a Payment-In-Kind (PIK) indicator; (AA) first conversion date; (BB) first conversion ratio; (CC) spread; (DD) reference rate; (EE) floor; and (FF) underlying entity ticker.

FINRA proposes to require underwriters to report all data fields for Corporate Debt Securities, as defined in FINRA's rules, prior to the first transaction in the security. FINRA would disseminate the corporate bond new issue reference data collected under Rule 6760 upon receipt.[24] FINRA states that it will submit a separate filing to establish fees related to the New Issue Reference Data Service at a future date and will implement the service after those fees are adopted.[25]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[26] The Commission therefore approves the proposed rule change, as amended.

As discussed below, the Commission believes that currently there is an inefficiency in the collection and availability of reference data[27] for newly issued corporate bonds and that this inefficiency results in an information asymmetry in the market for newly issued corporate bond reference data that can disadvantage many market participants. While some market participants may have timely access to reference data by virtue of receiving it directly from underwriters or from those that obtain it from underwriters, many market participants do not. This information asymmetry inhibits these market participants from transacting in the secondary market for newly issued bonds, whether through electronic trading venues, over the phone or through other methods, at the time those bonds begin trading to the detriment of those market participants and the market for newly issued corporate bonds.[28] The Commission believes it is important to make certain reference data available to market participants in a timely, accessible, and impartial manner, and further believes that FINRA's proposal is reasonably designed to address this information asymmetry to the benefit of the marketplace.

The Commission believes the requirement for underwriters to report the reference data fields to FINRA prior to the first transaction in the security, coupled with FINRA's dissemination of the new issue reference data immediately upon receipt, will allow all market participants to have timely, basic information that is important for the identification, valuation, and settlement of a newly issued corporate bond in order to participate in trading in the secondary market without delay, whether through electronic trading venues, over the phone or through other methods. Improved reference data transparency should promote market efficiency and fair competition and enable broader participation by all market participants when a new issue corporate bond begins trading, which should also promote improved secondary market liquidity and lower costs when secondary trading begins. In sum, the Commission believes that FINRA's proposal will ''promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in'' newly issued corporate bonds, and ''remove impediments to and perfect the mechanism of a free and open market'' with respect to the market in such securities, consistent with Section 15A(b)(6) of the Act. Furthermore, the Commission will monitor the progress of the New Issue Reference Data Service and its use by market participants and

facilitating trade reporting and dissemination in TRACE-Eligible Securities, as that term is defined in Rule 6710(a).

[22] FINRA proposes to move the definition of ''Corporate Debt Security,'' which is currently located in FINRA Rule 2232 (Customer Confirmations), into the TRACE Rule Series (specifically Rule 6710 (Definitions)) and to make corresponding technical edits to Rule 2232 to refer to the relocated definition in Rule 6710. In addition, FINRA proposes to make two changes to the definition of ''Corporate Debt Security,'' which FINRA states are technical, non-substantive edits that reflect the original intent of the definition and are consistent with current FINRA guidance. *See* Notice, at 13978, n.6. Specifically, FINRA proposes to revise the current definition of Corporate Debt Security to (i) clarify that the definition is limited to TRACE-Eligible Securities, and (ii) update the definition to exclude Securitized Products (defined in Rule 6710(m)), rather than Asset-Backed Securities (defined in Rule 6710(cc)).

[23] Rule 6760(b), proposed to be renumbered as Rule 6760(b)(1), currently requires the following information to be reported to FINRA: (A) The CUSIP number or if a CUSIP number is not available, a similar numeric identifier (*e.g.,* a mortgage pool number); (B) the issuer name, or, for a Securitized Product, the names of the Securitizers; (C) the coupon rate; (D) the maturity; (E) whether Securities Act Rule 144A applies; (F) the time that the new issue is priced, and, if different, the time that the first transaction in the offering is executed; (G) a brief description of the issue (*e.g.,* senior subordinated note, senior note); and (H) such other information FINRA deems necessary to properly implement the reporting and dissemination of a TRACE-Eligible Security, or if any of items (B) through (H) has not been determined or a CUSIP number (or a similar numeric identifier) is not assigned or is not available when notice must be given, such other information that FINRA deems necessary and is sufficient to identify the security accurately.

[24] FINRA states that under proposed Rule 6760(d), there may be some information collected under the rule for security classification or other purposes that would not be disseminated. This may include, for example, information about ratings that is restricted by agreement. In addition, CUSIP Global Services' (''CGS'') information would not be disseminated to subscribers that do not have a valid license regarding use of CGS data.

[25] *See* Amendment No. 2, at 4. FINRA originally proposed to make the corporate bond new issue reference data available to any person or organization for a fee of $250 per month for internal purposes only, and for a fee of $6,000 per month where the data are retransmitted or repackaged for delivery and dissemination to any outside person or organization. *See* Notice, at 13979. FINRA withdrew these proposed fees in Amendment No. 2. *See supra* note 3.

[26] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). Petitioner stated that under Section 3(f) of the Act, the Commission's review of FINRA's proposal must include an assessment of overall costs and benefits. *See* Petitioner Statement, at 33. The Commission considers costs and benefits when it reviews SRO rule filings and has done so with respect to this proposal. The Commission addresses comments about economic effects of the proposed rule change on efficiency, competition, and capital formation, including the general costs and benefits of the proposal, below in Sections III.A.3; III.B.3, III.C.3; III.D.3; III.E.3 and III.F.3.

[27] It is the Commission's understanding that such reference data include issuer and issue identifiers and details, such as maturity, coupon, par value, payment frequency, amortization details, call schedule and convertibility, among other reference data, which terms are required for identifying, valuing, and settling transactions in newly issued corporate bonds. *See* Recommendation, at 1.

[28] *See generally infra* notes 31–42 and 89–102 accompanying text.

consider whether further steps are necessary, including whether market participants should report certain data to the Commission.

The Commission received a number of comment letters addressing the proposed rule change's consistency with the Act, specifically focusing on (1) whether information asymmetry exists in the current marketplace for new issue reference data; (2) the requirements for information reporting and distribution under the proposal; (3) FINRA's role as the centralized data source; (4) the proposal's burden on underwriters; (5) the proposal's effect on competition among reference data vendors; and (6) the lack of information regarding fees for the New Issue Reference Data Service.[29] The Commission addresses each of these issues below.

First, the Commission addresses comments regarding the justification for the proposal and the proposal's consistency with Section 15A(b)(6) of the Act in Sections III.A, III.B and III.C below. The Commission believes that the record demonstrates three things clearly: (1) There is an inefficiency in the collection and availability of reference data that results in an information asymmetry in the corporate bond market that can impede secondary market trading by many market participants to their disadvantage because many market participants, including investors, intermediaries, trading platforms, and data vendors, do not have accurate, complete and timely access to corporate bond new issue reference data on the day a new issue begins trading in the secondary market; (2) the proposed New Issue Reference Data Service is reasonably designed to address this information asymmetry by providing reference data important for the identification, valuation, and settlement of newly issued corporate bonds to market participants when secondary trading begins; and (3) FINRA, as an SRO that is subject to Commission oversight, is an appropriate entity to provide market participants with accurate, complete, impartial and timely access to such corporate bond new issue reference data. As discussed further below, providing all market participants, including data vendors, on an impartial basis with basic information concerning a newly issued bond that market participants need in order to identify and value corporate bonds and settle corporate bond transactions should promote competition among market participants and improve the corporate bond market's overall function by enabling a broader array of market participants and service providers to engage in this market on the day a newly issued corporate bond begins trading in the secondary market. As a result, the Commission finds that FINRA's proposal is consistent with Section 15A(b)(6) of the Act.

Second, the Commission addresses comments that the proposed information required to be collected and the timing for reporting such information under the proposal would be burdensome to underwriters in Section III.D. As discussed below, the Commission finds that such burdens imposed on underwriters by the proposal, including smaller underwriters, would be limited because of such underwriters' existing data collection and reporting practices with respect to the information FINRA proposes to be reported. Furthermore, the Commission believes that any burdens on underwriters are justified by the benefits of the proposal.

Third, in Section III.E, the Commission addresses arguments raised that the proposal is inconsistent with Section 15A(b)(9) of the Act because it would burden competition by, among other things, reducing competition among reference data vendors and decreasing investment and innovation in the marketplace, ultimately leading to increased costs. The Commission finds that the proposal will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As explained below, the impact on competition is uncertain. It is possible that FINRA's proposal will have a positive impact on competition among data vendors. Additionally, the limited set of data proposed to be reported and disseminated should not supplant the demand for a more comprehensive reference database with enhanced data sets that contain additional fields that are not reported to or disseminated by FINRA. As a result, the Commission believes any burden on competition would both be limited and justified by the evidence in the record demonstrating an information asymmetry that can disadvantage many market participants due to the lack of timely access to basic information that is important for the identification, valuation and settlement of newly issued corporate bonds at the time a bond begins trading in the secondary market.

Finally, in Section III.F the Commission addresses arguments raised that (1) the Commission could not fully assess the proposal's consistency with the Act without knowing either the proposed fees for, or the cost to build, the New Issue Reference Data Service; (2) separating the fee proposal into a subsequent filing allows FINRA to avoid regulatory and public scrutiny of the proposed fees; and (3) the Commission erred in failing to find that the proposal was consistent with Section 15A(b)(5) of the Act. As explained below, the Commission disagrees that it cannot adequately assess the proposal's consistency with the Act and its economic effects without knowing the fees that FINRA will charge for the proposed reference data service or the costs to build such service. Furthermore, the proposed fees may be properly filed as an immediately effective fee filing pursuant to Section 19 of the Act and the Commission is not required to make a finding that the proposal is consistent with Section 15A(b)(5) of the Act.

A. There is an Information Asymmetry That Exists in the Current Marketplace for Corporate Bond New Issue Reference Data That Can Disadvantage Many Market Participants

1. Comments on the Proposal

The Commission received several comments in support of and in opposition to FINRA's proposal.[30] Several commenters stated that currently there is no uniform, universally available mechanism for providing market participants with consistent and timely access to reference data about corporate bonds on the day a newly issued corporate bond

[29] Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008.htm.*

[30] The Commission notes that FINRA's proposal is generally consistent with a unanimous recommendation from the SEC Fixed Income Market Structure Advisory Committee (''FIMSAC'') made to the Commission on October 29, 2018. *See* Fixed Income Market Structure Advisory Committee Recommendation (October 29, 2018) available at *https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-corporate-bond-new-issue-reference-data-recommendation.pdf* (''Recommendation''). The FIMSAC is a federal advisory committee formed in November 2017 to provide the Commission with diverse perspectives on the structure and operations of the U.S. fixed income markets, as well as advice and recommendations on matters related to fixed income market structure. The FIMSAC's charter is available at *https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-charter-nov-2019.pdf.* The membership includes 23 individuals representing a range of perspectives on the fixed income markets including retail and institutional investors, corporate and municipal issuers, trading venues, institutional dealers, a retail dealer, a regional municipal securities dealer, a proprietary trading firm, a data provider, academics, and SROs. For a list of FIMSAC members, *see https://www.sec.gov/spotlight/fixed-income-advisory-committee.*

commences trading.[31] One commenter noted that the current process for underwriters to provide data is ''tedious, prone to transcription errors, and must be repeated for every bond in which the reference data vendor or the end user is interested.'' [32] Commenters also stated that currently underwriters and issuers do not provide reference data to all market participants at the same time.[33] One commenter stated that new issue corporate bond terms and conditions today are often received delayed and incomplete.[34]

Commenters stated that access to reference data is necessary for valuing, trading and settling corporate bonds.[35] As access to this reference data is not available to all market participants prior to the beginning of trading in a new issue, commenters asserted that certain market participants, including many investors, intermediaries, trading platforms, and reference data providers, are currently at a competitive disadvantage.[36] One commenter stated that ''[t]he information asymmetry which exists today adversely impacts the liquidity in the secondary markets for the first few hours or days of trading when significant trading occurs.'' [37]

Several commenters asserted that a centralized data reporting requirement for new corporate bond issues would increase the efficiency of the corporate bond market and reduce trading and research costs.[38] One commenter stated that ''the creation of the data service will enhance operational efficiencies for buy-side investors by ensuring reliable, consistent and timely access to data, necessary for the seamless trading and settlement of new issue corporate bonds'' and ''the proposed data service will help buy-side investors better manage their risk,'' including ''the reduced need for manual entries and overrides.'' [39] One commenter stated that ''[t]he timely dissemination of complete reference data will allow retail investors to have more timely access to newly issued bonds for purchase and/or price discovery, eliminating unnecessary information asymmetry.'' [40] Another commenter noted that a ''centralized data reporting requirement for such issues could benefit the industry and investors by enhancing market transparency, potentially aiding liquidity, reducing trading costs, and lowering the cost of capital for issuers.'' [41] One commenter further stated that mandated reference data collection and dissemination promotes capital formation by lowering the costs of valuing bonds so that prices more accurately reflect all available information.[42]

On the other hand, many commenters asserted that FINRA did not provide sufficient justification to support the need for the creation of the New Issue Reference Data Service as required under Section 15A(b)(6) of the Act.[43] In particular, Petitioner argued that FINRA provided no evidence that there is a market structure problem that requires regulatory intervention [44] and that FINRA ''failed to demonstrate a market failure limiting timely access to accurate data. . . .'' [45] Petitioner also stated that FINRA has no basis for its theory that the market for data services is uncompetitive; [46] that FINRA's assertion that customers for data services are dissatisfied is unsupported by evidence; [47] and that FINRA has provided no evidence that any trader or platform cannot get the information it demands, or that lack of information is impeding trading.[48] Petitioner further

[31] *See* Recommendation at 2; Letter from Lynn Martin, President and COO, ICE Data Services, dated April 29, 2019 (''ICE Data Letter''), at 1–2; Letter from Marshall Nicholson and Thomas S. Vales, ICE Bonds dated April 29, 2019 (''ICE Bonds Letter''), at 1–2; Letter from John Plansky, Executive Vice President and Chief Executive Officer, Charles River Development, dated May 24, 2019 (''Charles River Letter''), at 2; and Letter from SEC Fixed Income Market Structure Advisory Committee, dated June 11, 2019 (''FIMSAC Letter''), at 1–2.

[32] *See* Harris Letter, at 2.

[33] *See* FIMSAC Letter, at 2; ICE Bonds Letter, at 2 (''Certain electronic trading venues that are not registered as ATSs may have access to new issuance reference data obtained from affiliated corporate entities which process primary market trades prior to the dissemination of the reference data.'').

[34] *See* ICE Bonds Letter, at 2.

[35] *See* ICE Data Letter, at 2; Letter from Larry Harris, Fred V. Keenan Chair in Finance, U.S.C. Marshall School of Business, dated May 17, 2019 (''Harris Letter''), at 2–3; Charles River Letter, at 2; FIMSAC Letter, at 1–2.

[36] *See* ICE Data Letter, at 2; ICE Bonds Letter, at 2; FIMSAC Letter, at 2; Harris Letter, at 2–6; Charles River Letter, at 2 (''[T]he proposed data service will enhance transparency in a manner that benefits both buy-side investors and the financial markets as a whole, by facilitating access to new issuance reference data for corporate bonds. This is especially valuable to the fixed income market, which has historically been more opaque than other more liquid asset classes.''). *See also* Transcript of FIMSAC Meeting (October 29, 2018), available at *https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-102918transcript.txt* (''FIMSAC Transcript''), Comments from Frederic Demesy, Refinitiv, at 0078 (''[A]t the moment, we see that there are some market anomalies where some of the vendors have access to information much earlier than other vendors. And that creates basically competitive advantage on certain platforms, which is in my view not ideal for having a transparent market.'').

[37] *See* ICE Bonds Letter, at 2.

[38] *See* FIMSAC Letter, at 1–2; ICE Data Latter, at 2; Harris Letter, at 2–3; Charles River Letter, at 2.

[39] *See* Charles River Letter, at 2.

[40] *See* ICE Bonds Letter, at 2.

[41] *See* ICE Data Letter, at 2. *See also* Harris Letter, at 3(''[R]educing the costs of investment research will lead to more informative prices and lower liquidity costs as more market participants make better-informed decisions about what to buy, sell, and hold. . . . The value of the reference data and the low costs to the industry of requiring that they should be delivered in some machine-readable form provide an extraordinary strong foundation for the Commission to mandate [reference data collection and dissemination].''); Charles River Letter, at 2 (''By providing market participants with direct access to new issuance reference data, the proposed service will reduce overall costs, while permitting third party vendors to retransmit and repackage the reference data for market participants who may opt for this service. The proposed service also will increase the efficiency and interoperability of the corporate bond market and help promote fair and open competition among market participants.''). *See also* FIMSAC Transcript, supra note 36, Comments from Spencer Gallagher, ICE Data Services, at 0069–72 (''there is one area that no investment or no level of ingenuity can solve and that is equal access to new issue reference data at or prior to first trade execution'').

[42] *See* Harris Letter, at 5.

[43] *See* Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated April 29, 2019 (''Heritage Letter''), at 1–2; Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated April 29, 2019 (''Chamber Letter''), at 2; Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, dated April 29, 2019 (''Healthy Markets Letter''), at 4–5; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg, L.P., dated April 29, 2019 (''Petitioner Letter''), at 9–10. *See also* Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, dated July 29, 2019 (''Healthy Markets Letter II''), at 4–6; Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, dated October 25, 2019 (''Healthy Markets Letter III''); Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated July 29, 2019 (''Heritage Letter II''), at 2; Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated October 23, 2019 (''Heritage Letter III''), at 2; Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated July 29, 2019 (''Chamber Letter II''), at 3–4; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated July 1, 2019 (''Petitioner Letter II''), at 4–7; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated July 29, 2019 (''Petitioner Letter III''), at 5–8; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated October 24, 2019 (''Petitioner Letter IV''), at 4; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated November 27, 2019 (''Petitioner Letter V''), at 3–4; and Letter from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated March 13, 2020 (''Heritage Letter IV'').

[44] *See* Petitioner Letter, at 12–13; Petitioner Letter II at 4–6; Petitioner Letter III at 6–7; Petitioner Letter V, at 3. *See also* Petitioner Statement, at 2, (''No evidence indicates that current methods of consensual information distribution are impeding electronic trading.'').

[45] *See* Petition for Review, at 19.

[46] *See* Petitioner Statement, at 21–22. Petitioner also stated that while the proposal asserted barriers to entry, it mentioned only one such supposed barrier: the investment required to build a system to manage bond data. Petitioner argued that the fact that building a new business would require investment is not a barrier to entry and does not make a market uncompetitive. In addition, Petitioner stated that FINRA has not offered any evidence of the investment required to build such a system and how that would dissuade market entrants. *See id.*

[47] *See id.* at 22–23.

[48] *See id.,* at 28. Petitioner stated that one anonymous person told FINRA it could not get the

stated that ''the bond-trading market is already headed in the direction FINRA supports—without its intervention'' and that ''data and reporting show a clear acceleration in the marketplace toward electronic trading of new issues.'' [49] Petitioner concluded that ''the bond markets are healthy and growing robustly using existing market-based data services'' and that ''FINRA should not be allowed to oust market-based providers in favor of a regulatory utility without showing a substantial market failure.'' [50]

In addition, Petitioner stated that FINRA provided no evidence that the proposal would provide market participants with more complete, accurate, and timely data about new issues; reduce broken trades and errors; [51] or reduce costs or duplicated efforts.[52] Petitioner stated that FINRA suggests a number of hypothetical benefits that might flow from the proposal, such as more accurate data, but that such benefits ''are entirely speculative.'' [53] Another commenter stated that ''[b]efore intervening in the existing market for information and granting itself a potentially lucrative monopoly on providing this information to market participants, FINRA should be required to factually demonstrate that . . . [the] benefits [of the proposal] are so substantial and clear to overcome the strong presumption that private actors in competitive markets are the best means of providing goods and services.'' [54]

2. FINRA Response to Comments

In its response to the petitioner, FINRA stated that its proposal is ''designed to address a particular problem in today's market—namely, that a number of market participants are not reasonably able to gain access to timely, comprehensive, and accurate corporate bond new issue reference data when the bonds begin trading.'' [55] FINRA stated that the record provides sufficient support for its proposal, and that this problem is identified by the Fixed Income Market Structure Advisory Committee (''FIMSAC''), by FINRA's own independent outreach to a diverse set of market participants, by comments submitted in support of the proposal,[56] and in FINRA's data analysis.[57]

FINRA stated that the robust public record supporting the proposal begins with the unanimous FIMSAC Recommendation.[58] FINRA stated that FIMSAC's Technology and Electronic Trading Subcommittee (''Subcommittee''), which represents a cross-section of market participants, recognized that disparities exist among reference data vendors' access to new issue reference data depending on several factors, including the vendors' relationship with underwriters; that private data vendors are not obligated to provide impartial access to key new issue reference data; and that the resulting confusion increases transaction costs and impedes competition in the corporate bond markets.[59] FINRA stated that to address these concerns, the Subcommittee recommended the establishment of a consolidated new issue reference data service that is made available to all subscribers in a timely fashion and recommended that FINRA operate the service and provide subscribers with impartial and commercially reasonable access, subject to applicable SRO regulation.[60] FINRA stated that the Subcommittee received strong support for the Recommendation when it was presented for consideration by the full FIMSAC and from panelists who supported the Recommendation.[61] FINRA pointed to statements by members of the FIMSAC and panelists at the FIMSAC meeting, including two data providers and an investment management firm, to refute the assertion that a well-functioning, competitive market currently exists for corporate new issue reference data, as suggested by some commenters, and to provide support that market participants bear the costs of the current information disparity.[62] FINRA noted that the FIMSAC also subsequently reaffirmed the Recommendation in the FIMSAC Letter.

In addition, FINRA stated that it performed its ''own independent outreach to eleven market participants—

data it wanted from its current vendor and that FINRA has not reported any reason that the person could not fulfill its needs with a different, competing vendor. *See id.,* at 28, n.19.

[49] *See* Petition for Review, at 22; Petitioner Statement, at 24–28. Petitioner presented data regarding trading by alternative trading systems (''ATSs'') on pricing day to argue that electronic trading platforms can readily access new issue bond reference data, and that the market for new issue corporate bonds is healthy and already evolving in the manner that the FIMSAC desires. For example, this commenter provided data (for new issues from March 12, 2019 to April 11, 2019) demonstrating that ATSs arranged a trade in 43% of the new Jumbo-sized issues, 28% of the new Benchmark-sized issues, and 11% of medium-sized issues on the day the bond was free to trade. *See* Petitioner Letter, at 12–13; Petitioner Statement, at 25, n.15. In addition, this commenter presented evidence that over the past year, the number of Jumbo-sized new issues that traded electronically on the day they were priced more than doubled to 30%. *See* Petitioner Letter II, at 4–6; Petitioner Letter III, at 6; Petitioner Letter IV, at 4–5; Petitioner Statement, at 25, n.15. This commenter stated that since FINRA proposed its effort to standardize and centralize bond-reference data reporting, competition in this area has only increased, citing a recent effort by various financial institutions to streamline communications and data among market participants by connecting underwriters and investors. *See* Petitioner Letter IV, at 6. This commenter also pointed to an analysis from Greenwich Associates that it stated shows overall growth in ATS electronic corporate bond trading. *See* Petitioner Statement, at 25. This commenter further stated that based on data from February 2020 compiled by the commenter's market information, in mid-2018 the percentage of first-day trades over $250 million that were on ATSs increased to 39%, and electronic trading of the largest issues has steadily grown from 16% to over 48%. *See* Petitioner Statement, at 27.

[50] *See* Petitioner Statement, at 21, 24.

[51] Petitioner stated that ''there appears to be plenty of time to correct errors before they enter the settlement and clearing process'' and presented evidence that over 91% of new issues settle three days or more after a new issue is priced and 66% settle four days or more after a new issue is priced. *See* Petitioner Letter, at 10–11.

[52] *See* Petitioner Letter, at 9–14; Petitioner Letter II, at 4–7; Petitioner Letter III, at 5–8. Petitioner stated that market participants currently demand more reference data fields than FINRA is proposing to collect; thus the proposal will not avoid ''duplicative efforts'' and may fragment the market. *See* Petitioner Letter, at 13–14.

[53] *See* Petitioner Statement, at 3, 35. *See also* Heritage Letter V, at 2 (stating that FINRA has not conducted ''even the most rudimentary cost-benefit analysis.'').

[54] *See* Heritage Letter V, at 2.

[55] *See* FINRA Statement, at 3.

[56] FINRA cited comment letters noting that there currently exist issues with the availability, completeness, and timeliness of new issue reference data; and that the current information asymmetry with respect to such data harms liquidity, execution quality and competition in the corporate bond market. *See* Letter from Alexander Ellenberg, Associate General Counsel, FINRA, dated October 29, 2019 (''Response Letter''), at 5 (citing to Harris Letter; ICE Bonds Letter; ICE Data Letter; Charles River Letter; and FIMSAC Letter). *See also supra* notes 31–42 and accompanying text.

[57] *See* FINRA Statement, at 3. *See also* Response Letter, at 3–4; Notice, at 13980–83.

[58] *See* FINRA Statement, at 5; Response Letter, at 4–5. *See also* Recommendation, *supra* note 30.

[59] *See* FINRA Statement, at 6–7 (citing Recommendation, *supra* note 30).

[60] *See* FINRA Statement, at 7.

[61] *See* FINRA Statement, at 8.

[62] Specifically, FINRA pointed to (i) a statement by Richard McVey, MarketAxess, that ''there are indeed gaps in corporate bond fixed income reference data, both in terms of when that data are available with different reference data providers, as well as sometimes the accuracy;'' (ii) a statement from Spencer Gallagher, ICE Data Services, that ''there is one area that no investment or no level of ingenuity can solve and that is equal access to new issue reference data at or prior to first trade execution;'' (iii) statements from Frederic Demesy, Refinitiv, that ''at the moment, we see that there are some market anomalies where some of the vendors have access to information much earlier than other vendors,'' and ''that creates basically competitive advantage on certain platforms,'' and that this disparity imposes ''higher costs for our customers;'' and (iv) statements from Alex Sedgwick, T. Rowe Price, noting that ''[h]istorically we have noticed cases where a new issue does take time to get set up on some of our electronic trading platforms, and that means that we can't necessarily go and use those electronic trading platforms right away.'' *See* FINRA Statement, at 8–9; Response Letter, at 5 (each citing to FIMSAC Transcript).

four data providers, three underwriters, two trading platforms, and two clearing firms—and heard the same problems as identified by the FIMSAC.'' [63] Based on this outreach, FINRA determined that ''there is not currently consistent collection of new issue reference data according to established data standards, nor is there uniform distribution of the data to market participants in a timely manner.'' [64] FINRA stated that its outreach indicated that data vendors receive new issue reference data through different channels at different times, and that as a result, market participants experience problems with trading and settling new issues of corporate bonds.[65] For example, FINRA stated that if a trading platform does not have essential information about a new issue, it cannot identify the bond and set it up on its platform to trade.[66] FINRA noted the experience of one trading platform that stated it could not facilitate trades in new issues on their first day of trading because the platform's reference data provider would only provide reference data relating to new issues the morning after issuance.[67] In addition, FINRA stated that if trading platforms, trading firms, or investors receive inconsistent reference data, there is an increased likelihood of broken trades and reduced efficiency reconciling data for purposes of trading, clearance, and settlement.[68] FINRA found from its outreach that inaccurate reference data create inconsistencies in trading and settlement and increase transaction costs for trading platforms, clearing firms, and electronic trading platforms.[69]

In response to comments that the need for the proposal is negated by data on the growth of electronic bond trading, FINRA argued that such data do not mitigate the concerns that the proposal is designed to address—namely, the lack of broadly available and accessible new issue reference data on the first day of secondary market trading.[70] FINRA stated that ''electronic trading platforms may receive data and begin trading late, while still contributing to cumulative growth'' and that ''data on the overall growth of electronic trading says nothing about whether the *rate* of growth is impacted or inhibited by the costs of limited access to reference data on the first day of trading.'' [71] FINRA argued that the growth of electronic trading in corporate bonds actually makes impartial access to these data even more important.[72]

In response to comments on the proposal, FINRA provided an analysis of corporate bond transactional data reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''), which FINRA stated is consistent with the problematic market conditions described by FIMSAC participants and commenters, and provides additional support for the proposal.[73] Specifically, FINRA examined the time lapse between the first secondary market trade reported to TRACE and the first trade reported by ATSs for newly issued corporate bonds in 2018.[74] FINRA found some ATSs experienced persistent lags between the first reported trades and first reported ATS trades, which FINRA stated suggested that some ATSs may not be receiving reference data in a timely fashion to allow them to set up new issues to begin trading on their platforms.[75] In response, however, Petitioner stated that FINRA's analysis is flawed in that the data (i) do not show that untimely reference data is the cause of differences in the timing of trading on different platforms; (ii) include all new issue bonds, rather than limiting the scope to large issues that are more likely to trade electronically; and (iii) ignore more current data that show movement toward electronic trading is accelerating rapidly in 2019.[76] In response to this commenter's objections, FINRA provided additional data from 2019, which it stated also demonstrate that some ATSs experienced persistent time lags before they began trading newly issued corporate bonds.[77]

In response to comments that FINRA did not provide an estimate of costs and benefits,[78] FINRA stated in its Response Letter that it provided a detailed analysis of the proposal's anticipated costs and benefits in its proposal.[79] FINRA stated that it included an ''Economic Impact Assessment'' in its proposal, which, among other things, described the current dissemination process of new issue reference data in the corporate bond market, benefits of the proposal, costs and negative impacts of the proposal, the anticipated effect of the proposal on competition among market participants and efficiency in the market, and alternative approaches considered by FINRA.[80]

In its proposal, FINRA stated that it expects that the New Issue Reference Data Service will increase the transparency of the corporate bond market, especially around the issuance period, and that such increased transparency will benefit the market, including investors, trading platforms, clearing firms, data providers, issuers, and underwriters, in a number of ways.[81] Specifically, FINRA stated that such transparency would provide benefits by: (i) Providing potential buyers with the opportunity to evaluate the bonds for investment, especially right after issuance, which would likely increase investment choices; (ii) allowing index operators the opportunity to evaluate new bonds for timely inclusion, which would help ensure that the index accurately represents the concurrent bond market condition; (iii) reducing broken trades

[63] *See* FINRA Statement, at 11; Response Letter, at 4; Notice, at 13980–81. FINRA stated that new issue reference data are generated by underwriters, aggregated by data providers, and then sold to various market participants for consumption, including trading and clearing firms, electronic trading platforms, broker-dealers and bond investors. FINRA stated that it conducted outreach to understand this dissemination process, direct and indirect costs imposed by the process and ways it might be improved. *See* Notice, at 13980.

[64] *See* Response Letter, at 4.

[65] *See* FINRA Statement, at 11; Response Letter, at 4; Notice, at 13981.

[66] *See* FINRA Statement, at 11.

[67] *See* FINRA Statement, at 11; Response Letter, at 4; Notice, at 13980, n.17.

[68] *See* FINRA Statement, at 11–12; Notice, at 13981.

[69] *See* Response Letter, at 4; Notice, at 13980.

[70] *See* FINRA Statement, at 21–22.

[71] *See* FINRA Statement, at 22 (emphasis in original).

[72] *See* FINRA Statement, at 22.

[73] *See* Response Letter, at 6–7.

[74] *See id.*

[75] *See id. See also* FINRA Statement, at 22. FINRA found that for the first day of trading in corporate bond new issues, an ATS traded at most 3% of the 11,518 newly issued bonds, and that over the subsequent 10 days after issuance, ATSs represented an increasing percentage of trading. *Id.*

[76] *See* Petitioner Letter V, at 1–2; Petitioner Statement, at 25–26.

[77] *See* FINRA Statement, at 22, 30. FINRA stated that while it recognizes the limitations of quantitative analysis given that TRACE data cannot currently identify trades on electronic trading platforms other than ATSs, such as trades facilitated by Petitioner, it continues to believe that, because ATSs represent one of the types of market participants that provided statements for the record of their difficulty receiving timely reference data access, this ATS analysis helps validate such qualitative evidence. *See* FINRA Statement, at 23.

[78] *See supra* notes 53–54 and accompanying text.

[79] *See* Response Letter, at 10. *See also* Notice, at 13981–83 (providing FINRA's Economic Impact Assessment). However, Petitioner stated that ''[d]eciding to excise the fee analysis, in the face of overwhelming negative commentary, belies FINRA's claim to have provided a 'detailed analysis of the Proposal's anticipated costs and benefits.' '' *See* Petitioner Letter V, at 4. *See also* Section III.F., *infra*.

[80] *See* Notice, at 13981–83.

[81] *See* Notice, at 13981. To support this statement, FINRA cited to various studies finding that TRACE implementation has demonstrated that transparency has facilitated trading and improved market quality. *See* FINRA's website for a list of TRACE Independent Academic Studies, available at *http://www.finra.org/industry/trace/trace-independent-academic-studies*. *See id.* at n.20.

and errors in trading due to inconsistent information; (iv) increasing trading speed by removing delays due to manually correcting reference data errors; (v) potentially increasing trading volumes that might otherwise be lost when traders do not have reference data on newly issued bonds, thereby increasing liquidity and lowering the cost of capital for issuers; (vi) providing data providers with a complete and accurate source of data and reducing the need for data providers to manually collect missing data or correct errors in the new issue reference data; (vii) increasing awareness of new issuances, which may help underwriters in marketing and underwriting; and (viii) reducing the need for underwriters to manually research other reference data sources for proper procurement of information.[82]

On the other hand, FINRA stated in its proposal that the New Issue Reference Data Service may impose costs on underwriters to report the additional reference data to FINRA through system upgrades or use of third-party vendors to report, and recognized that smaller underwriters may be burdened disproportionally.[83] However, FINRA also stated that (i) it understands that underwriters do not anticipate incurring significant costs for reporting under the proposal and (ii) any additional burden on smaller underwriters may be alleviated because reporting to FINRA would reduce the need for underwriters to report to other parties and/or underwriters can leverage investments already made in the existing reporting system necessary under FINRA Rule 6760.[84] In addition, FINRA noted that subscribers to FINRA's New Issue Reference Data Service will incur a subscription fee and setup cost, and FINRA stated that it intends to price the service as a utility provider using a cost-based approach.[85] Finally, FINRA stated that a centralized source of new issue reference data may create a single point of failure if data providers stop collecting data on their own and solely rely on FINRA's data service.[86] However, FINRA stated that it believes this is unlikely to happen because data providers will likely continue to collect a range of bond reference data beyond the limited fields provided by FINRA's service.[87]

3. Commission Discussion and Findings

The Commission understands that currently there is an inefficiency in the collection of reference data for newly issued corporate bonds and that this inefficiency results in an information asymmetry in the market for newly issued corporate bond reference data. This information asymmetry exists because some market participants have access to reference data necessary for identifying, valuing and settling newly issued corporate bonds at the time such bonds begin trading in the secondary market, while many other market participants lack that information at the time secondary trading begins. This information asymmetry inhibits many market participants from transacting in the secondary market for newly issued bonds at the time those bonds begin trading which can disadvantage those market participants.[88]

The collection of reference data by market participants currently is inefficient and the challenges associated with collecting this data and making it available broadly to market participants in time to trade in the secondary market are significant.[89] While some market participants may have timely access to reference data directly from underwriters or from those that obtain it from underwriters, many market participants do not. Underwriters may be unwilling to distribute reference data to all market participants that desire it out of concern that distributing the data to multiple market participants increases the risk of inaccuracies.[90] Market participants who do not have access to reference data from a vendor that has timely access to such data from underwriters or do not otherwise have the necessary relationships with underwriters[91] must expend substantial time and effort gathering information from multiple sources.[92] For those that lack this access, the process of collecting data from multiple sources is time consuming, requires substantial effort in order to assure the completeness and accuracy of the information, and often results in participants having unequal access to

[82] *See* Notice, at 13981.

[83] *See* Notice, at 13982.

[84] *See id. See also* Section III.D, *infra.*

[85] *See* Notice, at 13982; FINRA Statement, at 18.

[86] *See* Notice, at 13982.

[87] *See* Notice, at 13982. *See also* Section III.C, *infra.* For example, there are many other data provided by reference data providers concerning a bond issue, such as issuer information (*e.g.,* fundamentals data, capital structure data), specific bond rating, bond trade and selling restrictions, classification data (industry, legal entity, etc.), corporate action data, ESG (Environmental, Social & Governance) data, dividend data, instrument analytics data, and security ownership data. *See e.g.,* IHS Markit Reference Data Bonds Factsheet, available at *https://cdn.ihs.com/www/pdf/Reference-Data-Bonds-factsheet.pdf;* Bloomberg Reference Data Content and Data, available at *https://www.bloomberg.com/professional/product/reference-data/.*

[88] *See generally supra* notes 31–42 and accompanying text.

[89] *See* Notice, at 13980–13981 (describing in FINRA's Economic Impact Statement the current process for the collection and distribution of corporate bond reference data). The Commission notes that the process FINRA described in its Notice is consistent with the comments provided by reference data providers at the October 29, 2018 FIMSAC meeting. *See also* FIMSAC Transcript, supra note 36, Comments from Spencer Gallagher, ICE Data Services, at 0069–72 (''there is one area that no investment or no level of ingenuity can solve and that is equal access to new issue reference data at or prior to first trade execution''). *See generally* FIMSAC Transcript, *supra* note 36 (highlighting a detailed discussion among data vendors of the challenges with collecting and distributing reference data).

[90] *See* FIMSAC Transcript, supra note 36, Comments from Bob LoBue, J.P. Morgan, at 0080–81 (''We tend to not disseminate data to third party vendors off the corporate platform. I think the point of inaccuracies is the reason for that. So, we tend to use Bloomberg as our let's ensure it is accurate, and then people can source that information from that venue.''). Even if underwriters were to provide access to every market participant that sought to gain access to such information prior to the beginning of secondary market trading, that process would be inefficient as the underwriters would expend substantial effort providing such data to multiple parties and the recipients would likewise expend substantial effort to receive and ultimately utilize data from multiple parties.

[91] In the corporate bond market today, the Commission understands from market participants that Petitioner typically has the timeliest access to newly issued bond reference data on the first day a bond trades, as it enjoys the voluntary cooperation of underwriters. *See* FIMSAC Transcript, supra note 36, Comments from Bob LoBue, J.P. Morgan, at 0080–81 (''And I think the Refinitiv team and the ICE team intimating a competitive advantage for Bloomberg, there is no question that we do undertake getting our securities set up on the Bloomberg trading platform because that is what the industry predominately uses to book our tickets.''). *See also* FINRA Statement, at 3 (noting that Petitioner is the dominant private data vendor in today's market for corporate bond new issue reference data and ''often gains access to new issue reference data before other vendors and market participants.''). In his declaration, David Miao, the Global Head of Fixed Income Data at Bloomberg, L.P., states that he is ''not aware of any legal or structural barrier that prevents other vendors and market participants from accessing new issue reference data'' and that ''nothing prevents other vendors and market participants from accessing corporate bond new issue reference data in the same voluntary manner in which Bloomberg acquires it.'' Based on the information available to the Commission, the Commission disagrees. The statements of one of the largest underwriters of corporate bonds in the United States are particularly informative: Mr. Lobue stated at the October 29, 2018 FIMSAC meeting that J.P. Morgan provides corporate bond reference data to Petitioner and does not provide it to other data vendors. *See See* FIMSAC Transcript, supra note 36, Comments from Bob LoBue, J.P. Morgan, at 0080–81.

[92] *See e.g., supra* notes 32–37; FIMSAC Transcript, *supra* note 36, Comments from Spencer Gallagher, ICE Data Services, at 0069–72 (''Distribution [of new issue reference data] is not consistent in both completeness of the content or timeliness of the delivery. . . . All said, none of the avenues [for securing new issue reference data], underwriter emails, new issue publishing announcement or issuer websites provide a comprehensive coverage in a timely manner. We piece all of this together as available to us. On the few cases where we see no information, we will see the data on Edgar, usually via prospectus. But that is well after the pricing event and clearly not sufficient for pre-trade and trade workflows.'').

reference data on the first day a bond trades in the secondary market, ultimately resulting in an unnecessary market inefficiency.[93]

The Commission believes that the information asymmetry and resulting market inefficiency that exists can disadvantage many market participants because it hinders timely market-wide participation in the secondary market when a newly issued bond begins to trade, potentially negatively impacting secondary market liquidity. Comments received from investors, trading platforms, and data vendors support this finding. Commenters stated that the inability to participate in the secondary market raised a number of concerns.[94] First, market participants that are unable to trade newly issued bonds due to a lack of information, whether they be intermediaries, investors or trading platforms,[95] are at a competitive disadvantage to other market participants that have the information and ability to trade newly issued bonds on the first day of secondary trading when significant trading occurs.[96] These market participants have fewer investment options to meet their own business and investment needs or those of their customers relative to market participants that have access to reference data when a newly issued bond begins trading.[97] For example, as stated by one commenter, many ''retail investors and the broker dealers servicing them are disadvantaged by not being able to participate in the secondary markets during the critical time after a security is available to trade.'' [98] Additionally, to the extent some electronic trading platforms do not have the information necessary to identify, value and settle newly issued corporate bonds when such bonds begin trading in the secondary market, these platforms may be at a competitive disadvantage to those that do have such information.[99] Second, reduced participation in the secondary market due to this information asymmetry can adversely impact secondary market liquidity for newly issued bonds on the first day a bond trades and ultimately raise the cost of capital for issuers.[100] It has been shown that corporate issuers pay more to issue bonds (*i.e.,* bond offering yields are higher) when the expected liquidity in the secondary market is lower for those corporate bonds.[101] Third, information asymmetry with respect to new issue reference data increases transaction and opportunity costs, which may be passed on to customers.[102] The Commission also believes that the results of FINRA's outreach [103] are consistent with the range of comments and statements concerning the lack of timely reference data and the resultant impact on many market participants' ability to participate in the market on the first day a new issue trades in the secondary market, and the potentially negative impacts on liquidity that result.[104]

[93] *See id. See also* FIMSAC Transcript, *supra* note 36, Comments from Spencer Gallagher, ICE Data Services, at 0069–72 (''there is one area that no investment or no level of ingenuity can solve and that is equal access to new issue reference data at or prior to first trade execution''); Comments from Spencer Gallagher, ICE Data Services, at 0069–72; Comments from Rick McVey, MarketAxess, at 0066 (''there is significant manual effort today in getting new issue information into various databases. And that is prone to error. Reference data errors lead directly to trading errors.'').

[94] *See generally supra* notes 31–42 and accompanying text for a discussion of commenter concerns about information asymmetry in the corporate bond market today that can disadvantage many market participants.

[95] Petitioner stated that there is currently a trend in the marketplace toward electronic trading of new issues and therefore concluded that the bond markets are healthy and growing robustly using existing market-based data services and the proposal is unnecessary. *See supra* notes 49–50. Petitioner presented data concerning ATS trading in new issues purporting to suggest that there is no current access problem relating to new issue bond reference data. *See supra* note 49. In response, FINRA also presented TRACE data concerning ATSs and conducted its own analysis, which FINRA stated suggests that some ATSs may not be receiving reference data in a timely fashion to allow them to begin trading a newly issued corporate bond. *See supra* notes 73–75 and 77 and accompanying text. Petitioner disputed FINRA's analysis as flawed. *See supra* note 76. The Commission believes that the analyses of electronic trading in corporate new issues by ATSs provided by Petitioner and FINRA are necessarily limited, as there are a number of electronic bond trading platforms that are not regulated as ATSs and there are a number of other types of market participants, including investors, intermediaries and data vendors that may not have timely access to newly issued bond reference data to identify, value and settle bonds on the first day of trading in the secondary market. Therefore, these analyses, which focus on ATS trading in new issues, are not reflective of the market for newly issued corporate bonds as a whole.

[96] *See* ICE Data Letter, at 2; ICE Bonds Letter, at 2; FIMSAC Letter, at 2.

[97] *See* ICE Bonds Letter, at 2 (''The timely dissemination of complete reference data will allow retail investors to have more timely access to newly issued bonds for purchase and/or price discovery, eliminating unnecessary information asymmetry.''); Notice, at 13981 (discussing in FINRA's Economic Impact Assessment a variety of reasons why market participants that lack timely reference data today are at a competitive disadvantage to those market participants that do have timely access to reference data).

[98] *See* ICE Bonds Letter, at 2.

[99] *See e.g.,* ICE Bonds Letter at 2; FIMSAC Letter at 2; FINRA Notice at 13980; FIMSAC Transcript, *supra* note 36, Comments from Rick McVey, MarketAxess, at 0065 (recognizing that not all trading venues have timely access to reference data which results in some venues being able to trade the bonds when they begin trading in the secondary market while others cannot).

[100] *See* ICE Data Letter, at 2 (''a centralized data reporting requirement for such issues could benefit the industry and investors by enhancing market transparency, potentially aiding liquidity, reducing trading costs, and lowering the cost of capital for issuers''); FIMSAC Letter, at 2. *See also* FIMSAC Transcript, *supra* note 36, Comments from Alex Sedgwick, T. Rowe Price, at 0084–85 (''Electronic market-makers ultimately need this information to provide accurate pricing and accurate valuation for the prices that they are pushing out to the market. If this information is not available, that ultimately means that there are liquidity providers that may not be able to provide liquidity to us when those new issues are free to trade.'').

[101] *See* Goldstein, M.A., Hotchkiss, E.S., and Pedersen, D.J., 2019. Secondary market liquidity and primary market pricing of corporate bonds. Journal of Risk and Financial Management 12, 1–17.

[102] *See* Recommendation at 2. *See also* FIMSAC Transcript, *supra* note 36, Comments from Alex Sedgwick, T. Rowe Price, at 0084–85 (So, when . . . we are trading on the desk, we need to be able to measure our execution against benchmarks. If it takes more than a couple of hours or even more than a day for those benchmarks to become available, that is an area where we may not be able to do accurate trade cost analysis. And that is a very important sort of supporting piece of information as we think about best execution on the trading desk.''); Comments from Frederic Demesy, Refinitiv, at 0078 (''[A]t the moment, we see that there are some market anomalies where some of the vendors have access to information much earlier than other vendors. And that creates basically competitive advantage on certain platforms, which is in my view not ideal for having a transparent market. It also incurs higher costs for our customers. The first one would be on vendors. Market participants will have to source the data from multiple vendors to ensure that all the information is available, so [there are] duplicating costs. There is also an operational cost related in terms of data quality. So, when you onboard multiple feeds, ICE Data Service and Refinitiv data is not automatically in the same format. So, the customer has to develop operational efficiency tools to standardize the data on their platform. And third is when the market participant gets things wrong, it can have a huge impact, missing trade opportunities but also reputational risks that would be the worst.'').

[103] FINRA's proposal was informed by FINRA's outreach to a diverse set of market participants—including several data providers, underwriters and trading platforms—and responses from these market participants ''demonstrated a regulatory need for consistent, uniform, and timely corporate bond new issue reference data.'' *See supra* notes 63–69 and accompanying text. *See also* Response Letter, at 4; Notice, at 13980–81. The concerns of market participants, including data vendors, trading venues, and investors, regarding the lack of timely reference data are described in detail above. Based on this outreach, FINRA observed that various market segments may be lacking accurate, complete and timely reference data, including electronic trading platforms and smaller market participants that may not afford multiple data vendor subscriptions. *See* Response Letter, at 4. *See also* Notice, at 13980.

[104] *See e.g.* Notice, at 13980, n.17 (''According to one trading platform, its reference data provider would only provide data relating to new issues the morning after issuance, which resulted in the firm's clients not being able to trade the bond when it began to trade.''). Petitioner argued that nothing prevented this platform from fulfilling its needs with a different, competing vendor. *See* Petitioner Statement, at 28, n.19. However, as further discussed herein, in the present market different vendors may have access to different reference data relating to new issues as there is no requirement that underwriters or issuers provide the same

In sum, the record reflects that an information asymmetry that can disadvantage many market participants currently exists in the market for newly issued corporate bond reference data. In the Commission's view, FINRA's proposal, as discussed further below, is reasonably designed to address this information asymmetry in the current market to the benefit of the marketplace.

B. The Proposal Is Reasonably Designed To Address Existing Information Asymmetry That can Disadvantage Many Market Participants by Providing Reference Data Important for the Identification, Valuation, and Settlement of Newly Issued Corporate Bonds When Secondary Trading Begins

1. Comments on the Proposal

The Commission received several comments relating to the proposed data fields required to be reported and the timing for submission of such data fields. Several commenters requested that FINRA make modifications to and/or provide further clarity regarding certain data fields.[105] One commenter stated that, while it did not disagree with or question the value of FINRA's proposed data fields, FINRA should provide information to support its selections of each of the proposed data fields.[106] One commenter stated that the proposal would not require the disclosure of any data that is not already disclosed in required security registration statements and other required filings.[107] In its comment letter the FIMSAC recommended that FINRA combine certain proposed data fields and include six additional data fields.[108] Petitioner stated that FINRA's proposal to require underwriters to report both CUSIPs and ISINs would further entrench the monopoly enjoyed by CUSIP and ISIN, and would embed ISIN into the FINRA rulebook for the first time.[109] Petitioner further stated that FINRA does not address the market consequences or additional costs to underwriters or end users that would result from mandating further usage of CUSIPs and ISINs.[110] Petitioner recommended that FINRA consider allowing the use of free, open-source alternative security identifiers, such as the Financial Instrument Global Identifier (''FIGI''), in addition to or in the place of CUSIP and ISIN.[111]

One commenter stated that it could be challenging for underwriters to provide all of the data elements prior to the first trade and requested that the proposal be modified so that underwriters would only be required to report certain information prior to the first trade, with the remaining information required to be reported within 60 minutes of the first trade.[112] On the other hand, one commenter stated that phased reporting of data elements causes material inefficiencies in the intake and consumption of data and that eliminating phased reporting will lead to more complete and consistent reference data.[113]

Commenters also requested various other clarifications to the proposal.[114]

2. FINRA Response to Comments

In response to the FIMSAC Letter, FINRA incorporated the FIMSAC's additional supporting rationale for the data fields into its filing and added the six additional data fields suggested by the FIMSAC.[115] FINRA stated that it agrees that these six new fields are useful and appropriate to include in the proposal as they are important for settlement and valuation of floating rate notes and convertible bonds.[116] FINRA further stated that it believes the six new fields would not materially increase the costs of the proposal on underwriters.[117] In addition, in response to comments requesting clarification of certain data fields, Amendment No. 2 included additional detail relating to certain data fields.[118]

In response to comments regarding the timing of the reporting requirement, FINRA stated that it believes it is important to maintain the proposal's pre-first transaction reporting requirement.[119] FINRA stated that the purpose of the pre-first trade requirement is to facilitate the collection and dissemination of all proposed new issue reference data fields before secondary trading in a security begins, and recognized supporting comments on this point.[120] FINRA stated that, as

information to all reference data providers or provide it at the same time. *See supra* notes 88–93 and accompanying text.

[105] *See* Credit Roundtable Letter, at 1; ICE Data Letter, at 2–3; SIFMA Letter, at 3; FIMSAC Letter, at 14; Letter from Christopher B. Killian, Managing Director, SIFMA, dated July 29, 2019 (''SIFMA Letter II''), at 2; Letter from Christopher B. Killian, Managing Director, SIFMA, dated October 24, 2019 (''SIFMA Letter III''), at 2–3.

[106] *See* Healthy Markets Letter, at 4, 6; Healthy Markets Letter III, at 2.

[107] *See* Harris Letter, at 2, 66 (''The fields on the FINRA list are sufficient to value most bonds. . . . I believe that FINRA chose the fields wisely.'').

[108] *See* FIMSAC Letter, at 7–8, 10, 12–13. FIMSAC proposed combining the Maturity and Perpetual Maturity indicators into one existing field (Maturity Date) and the 144A Eligible and Regulation S indicators into one new field (Series). In addition, FIMSAC recommended requiring the following additional data fields: First Conversion Date; First Conversion Ratio; Spread; Reference Rate; Floor; and Underlying. The FIMSAC also provided supporting rationale for the data fields included in the proposal and the suggested additional data fields. *See* FIMSAC Letter at 2–3 and Schedule A.

[109] *See* Petitioner Letter I, at 17; Petitioner Letter, III, at 11.

[110] *See id.*

[111] *See* Petitioner Letter I, at 18.

[112] *See* Letter from Christopher B. Killian, Managing Director, SIFMA, dated April 29, 2019 (''SIFMA Letter''), at 1–2. *See also* Letter from Cathy Scott, Director, Fixed Income Forum, on behalf of The Credit Roundtable, dated April 29, 2019 (''Credit Roundtable Letter''), at 1 (cautioning that any data provision requirements on underwriters should not impede their ability to make markets in the new issue as soon as possible).

[113] *See* Charles River Letter, at 2. *See also* Healthy Markets Letter, at 4 (''[W]e do not disagree with FINRA's determination to require uniform pre-first trade reporting.'').

[114] Two commenters requested that FINRA clarify the meaning of the ''prior to the first transaction'' deadline for reporting reference data to FINRA. *See* ICE Data Letter, at 2; ICE Bonds Letter, at 2. One commenter requested FINRA clarify the process for underwriters to correct erroneously reported reference data. *See* Letter from Salman Banaei, Executive Director, IHS Markit, dated April 29, 2019 (''IHS Markit Letter''), at 2–3. Two commenters made technical suggestions regarding the methods for supplying and redistributing the required data. *See* SIFMA Letter, at 2; ICE Data Letter, at 3; SIFMA Letter III, at 2.

[115] *See* Amendment No. 2, at 5 and Exhibit 3. *See also* Response Letter, at 12–13.

[116] *See* Amendment No. 2, at 5 and Exhibit 3; Response Letter, at 13. FINRA stated that it also agrees with FIMSAC's recommendation to combine the Maturity and Perpetual Maturity indicators into one existing field (Maturity Date) and marked the amended Exhibit 3 to reflect that the maturity and perpetual maturity indicator fields will be tied together as combined fields for purposes of reporting the information. *See* Amendment No. 2, at 5, n.9, and Exhibit 3; Response Letter, at 13, n.41. With respect to FIMSAC's recommendation to combine the 144A Eligible and Regulation S indicator fields into a single ''Series'' field, FINRA stated that it believes it will be easier operationally to maintain the separate fields to limit potential confusion about other security offering types or issuances that may meet more than one offering type. *See id.*

[117] *See* Response Letter, at 13.

[118] *See* Amendment No. 2, at 5 and Exhibit 3; Response Letter, at 12–13. In particular, FINRA stated that it (i) provided additional guidance to clarify that the ratings data field does not require reporting specific ratings, but rather whether the security is Investment Grade or Non-Investment Grade, as those terms are defined in Rule 6710; and (ii) clarified the information to be reported for the security type, first coupon period type, minimum increment, and minimum piece/denomination data fields. *See* Amendment No. 2, at 5, n.10, and Exhibit 3; Response Letter, at 12–13, n.39.

[119] *See* Response Letter, at 14. FINRA stated that ''[b]ased on conversations with underwriters, FINRA understands that underwriters do not anticipate incurring significant costs for reporting under this proposal.'' *See* Notice, at 13982.

[120] *See* Response Letter, at 14 (citing to ICE Bonds Letter, at 2; and ICE Data Letter). In response to comments requesting clarification on what the term ''first transaction'' means, FINRA stated that ''it means the time of execution of the first transaction of the offering (*i.e.,* the time of execution for the first reported primary transaction in the security), as specified currently in Rule 6760.'' *See* Response Letter, at 14. FINRA stated that it believes this position is consistent with the recommendation from ICE Data to provide clarification for the term

Continued

amended, it believes its proposal ''reflects a modest expansion of Rule 6760 to include the basic set of essential new issue reference data fields that market participants require for pricing trading and settlement.'' [121] FINRA stated that the proposed requirement for underwriters to report reference data for a new issue before the first trade in the bond, coupled with FINRA's dissemination of the new issue reference data immediately upon receipt, ''will allow market participants to receive the information in a timelier manner and more efficiently participate in market activity once a new issue begins secondary trading.'' [122] In response to comments regarding the use of alternative securities identifiers, rather than CUSIP and ISIN, FINRA stated that it does not believe this element of the proposal requires new economic impact analysis since current FINRA Rule 6760 already requires underwriters to report a CUSIP number or a similar numeric identifier if a CUSIP number is not available.[123]

FINRA further stated that it recognizes that commenters have requested further clarification of several data fields,[124] and that FINRA believes such requests can be addressed with guidance provided in the customary course of new rule implementation, and FINRA will continue to engage with market participants as required to provide such guidance.[125] In addition, FINRA stated that it intends to implement functionality to allow for underwriters to correct previously submitted data to FINRA for a significant period after receiving the initial Rule 6760 submission and that FINRA will continue to engage with market participants on the appropriate business requirements for the reporting process.[126] FINRA also stated that it may take a phased approach to implementation to promote compliance and data accuracy, where FINRA would make the reporting requirements effective for a brief time period to analyze and evaluate the accuracy of the reported data before implementing dissemination of the data.[127]

3. Commission Discussion and Findings

By helping eliminate the existing information asymmetry in access to reference data, the proposed collection and dissemination of the proposed data elements should promote (i) competition among market participants by facilitating broader market participation in the secondary market of a newly issued corporate bond on the first day that bond trades, (ii) improved secondary market liquidity when a bond becomes available to trade in the secondary market and lower cost of capital for issuers, and (iii) lower other costs by providing data vendors with a more efficient method of collecting reference data and eliminating existing market inefficiencies. As discussed further below, the Commission believes eliminating the information asymmetry with respect to newly issued bond reference data is consistent with Section 15A(b)(6) of the Act as it will ''promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in'' newly issued corporate bonds, and ''remove impediments to and perfect the mechanism of a free and open market'' with respect to the market in such securities. FINRA's proposal would require all FINRA member underwriters subject to Rule 6760 to report to FINRA 32 new data elements for all new issues in Corporate Debt Securities, as defined in FINRA's rules. The required data fields proposed to be reported and disseminated, together with data fields already specified in the current rule, reflect all but one of the fields that were described in the Recommendation and in the supplemental FIMSAC Letter,[128] and include additional data fields identified by FINRA during its supplemental industry outreach.[129] As stated by FINRA, several fields specified in the proposed rule change are already required to be reported or are reported voluntarily on the FINRA TRACE New Issue Form.[130] In addition to the FIMSAC,[131] a number of commenters agreed with the required data fields put forth by FINRA.[132] FINRA set forth a detailed description of each new required data field [133] and the rationale for including the field, as follows: [134]

- ISIN Number—needed to uniquely identify securities that are traded and settled internationally outside of North America.
- Currency—necessary for settlement purposes in order to determine the currency of the principal, interest, or premium that will be paid or received at the time of distribution or settlement of a trade.
- Issue Date/First Settlement Date—needed for settlement purposes; required in order to populate the first settlement date of the bond; needed in order to settle the bond trade between counterparties when trading new issues.
- Interest Accrual Date—necessary for settlement and valuation purposes; needed in order to start the cash flow period of the coupon.

''first transaction'' consistent with MSRB Rule G–34. *See* Response Letter at 14, n.45 (citing to ICE Data Letter, at 2).

[121] *See* FINRA Statement, at 10–11.

[122] *See id.*

[123] *See* FINRA Response Letter, at 9, n.28.

[124] *See, e.g.,* SIFMA Letter III, at 2–3.

[125] *See* Response Letter, at 12–13.

[126] *See id.,* at 14–15.

[127] *See id.,* at 15.

[128] *See* Recommendation at Schedule A; FIMSAC Letter at Schedule A. The one field from the Recommendation that FINRA did not include is ''Calculation Types (CALT).'' FINRA stated that it understands from industry outreach that this field leverages calculation methodology that is specific to one data vendor's protocols and may not be readily available to all underwriters that would be required to report information to FINRA under Rule 6760, or to consumers of the data. *See* Notice, at 13978, n.8.

[129] FINRA stated these additional fields were indicated by market participants as important in liquidity and risk assessment. *See* Notice, at 13978–79. *See also* Amendment No. 2, Exhibit 3.

[130] *See* Notice, at 13978. The FINRA TRACE New Issue Form is used by firms to set up securities pursuant to firms' existing obligations either under Rule 6760 or 6730 (Transaction Reporting). It allows for the submission of data fields required by these rules as well as additional data fields that underwriters often report voluntarily. As part of the proposal, FINRA would codify in Rule 6760 the specific fields that have been deemed necessary under current Rule 6760(b) and therefore are mandatory for successful submission of the TRACE New Issue Form. *See* Notice, at 13978, n.9.

[131] *See supra* note 128 and accompanying text.

[132] *See, e.g.,* Harris Letter, at 6 (''The fields on the FINRA list are sufficient to value most bonds. . . . I believe that FINRA chose the fields wisely.''); ICE Data Letter, at 2 (''ICE Data Services believes the scope of the Proposal is appropriate and we support the inclusion of the 30 data fields enumerated in the Proposal's Exhibit 3.'').

[133] FINRA Rule 6760 currently requires underwriters to report to FINRA the following information: Issuer; Coupon; CUSIP Number; Maturity; 144A Eligibility Indicator; the time that a new issue is priced and, if different, the time that the first transaction in the offering is executed; a brief description of the issue; and such other information as FINRA deems necessary to properly implement the reporting and dissemination of a TRACE-Eligible Security. FINRA's proposal will require that these data elements be reported to FINRA prior to the first transaction in the security in all instances.

[134] *See* Amendment No. 2, Exhibit 3. Similar rationale for each data field was also put forth by the FIMSAC. *See* FIMSAC Letter, at Schedule A. In addition, in Amendment No. 2, FINRA set forth its rationale for including certain data fields currently required to be reported under Rule 6760, as follows: (1) Issuer—necessary for settlement and valuation purposes; the investor needs to know the issuing entity of the bond; (2) Coupon—needed for settlement and valuation purposes; the coupon rate is needed for accrual/interest/cash flow calculations; (3) CUSIP Number—needed to uniquely identify securities that trade, clear, and settle in North America, particularly in the United States; (4) Maturity—necessary for settlement and valuation purposes; this field is necessary in order to understand when the bond is due to pay back its principal at par; this field is used to back populate accruals and cash flows; and (5) 144A Eligible Indicator—necessary for settlement purposes; this field is needed to distinguish 144A securities for QIB eligible investors. *See* Amendment No. 2, Exhibit 3. *See also* FIMSAC Letter, at Schedule A.

• Day Count Description—necessary for settlement and valuation purposes; needed to calculate the purchase accrued interest and coupon of the security.

• Coupon Frequency—necessary for settlement and valuation purposes; needed to determine how often the coupon payment is made within the year and to calculate the purchase accrued interest and coupon payments.

• First Coupon Payment Date—necessary for settlement and valuation purposes; needed to determine whether the coupon will have a short or long stub on its first coupon payment.

• Regulation S Indicator –necessary for settlement purposes; needed to distinguish Regulation S securities for non-U.S. entities.

• Security Type—needed to identify the type of security being traded and its terms/features.

• Bond Type—necessary for valuation purposes; needed as the bond classification dictates the payout order in the event of an issuer default; determines the liquidation preference which specifically affects the valuation of the security.

• First Coupon Period Type—necessary for settlement and valuation purposes; denotes whether the coupon will have a short or long stub on its first coupon payment depending on the security's issue date.

• Convertible Indicator—necessary for valuation purposes; needed to understand if the bond is convertible and to allow set up with the underlying equity and conversion price/conversion ratio.

• First Conversion Date—necessary for valuation purposes; needed to determine when the bond may be converted into stock.

• First Conversion Ratio—necessary for valuation purposes; needed to determine the number of shares into which each convertible bond can be converted.

• Call Indicator—necessary for valuation purposes; needed in order to know if the bond has call feature(s); needed when the security is created and will also have an effect on its valuation.

• First Call Date—necessary for valuation purposes; needed in order to know the first call date of the security and will have an effect on bond valuation.

• Put Indicator—necessary for valuation purposes; needed in order to know if the bond has puttable feature(s); needed when the security is created and will also have an effect on its valuation.

• First Put Date—necessary for valuation purposes; needed in order to know the first put date of the security and will have an effect on bond valuation.

• Minimum Increment—necessary for settlement purposes; needed in order to understand the minimum incremental amount of bonds that an entity can buy and settle at the depository.

• Minimum Piece/Denomination—necessary for settlement purposes; needed in order to understand the minimum tradeable amount of bonds that an entity can buy and settle at the depository.

• Spread; Reference Rate & Floor—necessary for settlement and valuation purposes; needed to build a cash flow table for the security which determines the coupon for the period; directly affects the purchase accrued interest and future interest distributions; needed to calculate the purchase and interest accrued.

• Underlying Entity Ticker—necessary for valuation purposes; needed to value convertible bonds.

• Issuance Amount—addresses the size of the deal, which is a data attribute for index inclusion criteria across almost every fixed income index; would have influence on ETF, liquidity, etc.[135]

• First Call Price & First Put Price—critical for option adjusted spread (OAS) and average life calculations; represent important fields for most clients (especially retail investors) when they gauge re-investment risk.

• Coupon Type—denotes potential complexity and predictable cash flow data.

• Rating (TRACE Grade)—important to assess risk; FINRA utilizes ratings to determine TRACE grade (Investment Grade or Non-Investment Grade) which determines dissemination volume caps.

• Perpetual Maturity Indicator—important for pre-trade compliance; yield calculations generally use first call on perpetual securities.

• PIK Indicator—important for pre-trade compliance as it indicates cash flow implications and risk for many investors.

As set forth above, FINRA has explained (and several commenters have agreed)[136] that each data field is required to either identify, settle or value a newly issued corporate bond. The Commission agrees with FINRA's rationale for requiring each data field, and believes that the required data fields are appropriately tailored to facilitate the identification, valuation and settlement of newly issued corporate bonds.[137] Furthermore, as discussed in detail in Section III.E below, the Commission believes FINRA's proposal encompasses a limited set of data that will enable broader market participation at the beginning of secondary market trading, but will not supplant the demand for more comprehensive data sets that contain additional fields not reported to or disseminated by FINRA.[138]

In addition, the Commission agrees that it is important that all required data elements for new issues in corporate debt securities be reported prior to the first transaction in the security so that market participants will be able to participate in the secondary market

[135] The Commission believes that FINRA's statement here is intended to convey that a bond's issuance amount (*e.g.,* the total par amount issued) is an important piece of information for market participants because the size of the issuance impacts a bond's potential inclusion in ETFs and impacts a bond's secondary market liquidity.

[136] *See supra* notes 131–132.

[137] *See* ICE Data Letter, at 2, FIMSAC Letter, at 2–3 and Schedule A and Harris Letter, at 6 (all commenting that FINRA's proposal included the necessary data elements for achieving the purpose of enabling market participants to participate in the secondary market when trading begins). The Commission does not believe that requiring the reporting of CUSIP and ISIN will cause any change in the manner underwriters procure this information today or the extent to which market participants rely on this information to identify specific securities. As FINRA recognized, CUSIP is already required to be reported to FINRA under FINRA Rule 6760. *See, e.g.,* FINRA Response Letter, at 9, n.28. Furthermore, both CUSIP and ISIN are widely used today as primary methods for identifying securities. While consideration could be given by FINRA to accept the reporting of other securities identifiers if FINRA decided to explore that in the future, the Commission agrees with comments that CUSIP and ISIN are currently necessary data elements for market participants to identify specific securities, thereby enabling their participation in the secondary market when these securities begin trading. *See e.g.,* FIMSAC Letter, at Schedule A; FINRA Letter, at 6. Regarding comments concerning the collection of alternative securities identifiers such as FIGI, the Commission recognizes that freely available, open alternatives to proprietary identifiers do not entail fees for storage, use, and redistribution, as is frequently the case for proprietary identifiers. The Commission also recognizes there are challenges to the adoption of alternatives to proprietary identifiers such as CUSIP and ISIN that are in widespread use, such as the need for such alternative identifiers to be supported in reference data and clearance and settlement systems in order for them to be viable alternatives to proprietary identifiers. A future proposed rule change could seek to lessen reliance on proprietary identifiers for regulatory reporting, including regulatory reporting related to corporate bonds. The Commission notes that FINRA could, if appropriate, file a proposed rule change with the Commission to supplement or allow alternatives to the securities identifier information that it will be collecting pursuant to this proposal. Any such proposal would be informed by the public notice and comment process required by the Act.

[138] There are many other data provided by data vendors that provide bond issue reference data, such as issuer information (*e.g.,* fundamentals data, capital structure data), specific bond rating, bond trade and selling restrictions, classification data (industry, legal entity, etc.), corporate action data, ESG (Environmental, Social & Governance) data, dividend data, instrument analytics data, and security ownership data. *See supra note 87.*

promptly.[139] FINRA stated this approach—to require uniform pre-first trade reporting [140]—would allow FINRA to collect and make all of the data available immediately to market participants, resulting in a more consistent, timely, and complete data set that will support more efficient pricing, trading and settlement of bonds.[141] As stated by FINRA and other commenters, improved reference data transparency should promote market efficiency and fair competition among all market participants by helping to ensure all market participants have access to consistent, timely and accurate reference data regarding newly issued corporate bonds.[142] The Commission believes providing market participants with reference data important for their participation in the secondary market when a bond begins to trade should eliminate the information asymmetry described above, which would benefit the corporate bond market.[143] Enabling broader participation by all market participants should promote (i) improved competition among market participants by providing all market participants with the ability to access the same investment options to meet their own business and investment needs or those of their customers at the time a bond becomes available in the secondary market, (ii) improved secondary market liquidity and lower the cost of capital for issuers as more market participants become able to participate in the secondary market on the first day of trading; and (iii) lower other costs by providing data vendors with a more efficient method of collecting reference data and eliminating existing market inefficiencies.[144] Furthermore, the Commission agrees with commenters and believes that the provision of reference data will benefit all participants on electronic trading platforms, including investors and intermediaries, by enabling them to price and trade bonds based on consistent, accurate, and timely information, which is vital to meet the information needs of an increasingly electronic corporate bond market.[145]

For these reasons, the Commission believes that FINRA's proposal is consistent with Section 15A(b)(6) of the Act as it will ''promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in'' newly issued corporate bonds, and ''remove impediments to and perfect the mechanism of a free and open market'' with respect to the market in such securities, consistent with Section 15A(b)(6) of the Act.[146] The Commission believes it is important for all required data fields to be reported to FINRA prior to the first transaction in the security because this requirement, coupled with FINRA's dissemination of the new issue reference data immediately upon receipt, will allow all market participants to have timely, basic information that is important for the identification, valuation, and settlement of newly issued corporate bonds in order to participate in the secondary market without delay.[147]

C. FINRA as Centralized Data Source

1. Comments on the Proposal

Petitioner questioned whether a single SRO would provide more accurate, complete and timely service than competing private sector providers and noted that the impact of any errors in a centralized system would be magnified.[148] Petitioner stated that ''[i]f trades need more accurate, compete and timely data, they can switch to one of several major data providers.'' [149] Petitioner stated that the Approval Order did not explain ''why uniform (as opposed to accurate and accessible) data is necessary or desirable in a competitive market'' and that ''assuming uniformity were an important goal . . . , neither FINRA nor the [Approval Order] has explained why that justifies a sole-source provider.'' [150] Petitioner

[139] Currently, for information reported under Rule 6760 for trade reporting purposes, the rule allows phased reporting in some cases. Specifically, for an offering of a security that is priced and begins trading on the same business day between 9:30 a.m. and 4:00 p.m. Eastern Time, Rule 6760 requires ''as much of the information set forth in paragraph (b)*(1)* that is available prior to the execution of the first transaction of the offering, which must be sufficient to identify the security accurately, and such other information that FINRA deems necessary and provide all other information required under paragraph (b)*(1)* within 15 minutes of the Time of Execution of the first transaction.'' *See* Rule 6760(c).

[140] The Commission recognizes that there may be an incremental burden on underwriters; however, the Commission believes this burden will be mitigated both by the existence of current reporting infrastructures and the fact that the data elements to be reported are likely already in the possession of underwriters, given the use of this information in the newly issued bond's primary offering. *See infra* Section III.D.3.

[141] *See* Notice, at 13979. FINRA noted that the Recommendation stated that managing underwriters should be required to report the data elements to FINRA no later than reporting such data elements to any third party not involved in the offering, including reference data vendors. *See* Recommendation, at 3. *See also supra* note 113 for supporting comment letters.

[142] *See* Notice, at 13981. See also *supra* notes 31–42 and accompanying text.

[143] *See supra* Section III.A.3.

[144] *See id. See also supra* notes 90–104 and accompanying text for a discussion of concerns about information asymmetry in the corporate bond market today that can disadvantage many market participants. Petitioner argued that FINRA provided no evidence the proposal would reduce broken trade errors or reduce costs or duplicated efforts. *See supra* notes 51–52. In contrast, other commenters and market participants stated that FINRA's proposed data service would reduce costs, eliminate duplicated efforts, and reduce trading errors, as market participants would no longer have to source data from multiple vendors or enter data manually. *See supra* notes 31–42 and 92–103 and accompanying text. As discussed herein, the Commission believes the proposal would benefit the corporate bond market by, among other things, lowering costs and potentially reducing trading errors.

[145] *See supra* notes 37–41 and note 100. *See also* FIMSAC Transcript, *supra* note 36, Comments from Frederic Demesy, Refinitiv, at 0077–78 (''[W]e see a transformation in the bond markets where in the past market participants were expecting the data to be available at the end of day or the timeliness was not as important as it is now. Now, a market participant wants to have the information when the bond prices to set up their platforms to be able to trade. They want to have updates intraday, and that is a very big difference from what happened maybe two, three or five years ago where end of day updates was enough for them to operate. Now, the market participants want information intraday. And that forces market vendors . . . to rethink the way we distribute the reference data. And obviously the more the bond trades electronically, the more market participants would want to have this information on time.''); Comments from Alex Sedgwick, T. Rowe Price, at 0084–85 (''Electronic market-makers ultimately need this information to provide accurate pricing and accurate valuation for the prices that they are pushing out to the market. If this information is not available, that ultimately means that there are liquidity providers that may not be able to provide liquidity to us when those new issues are free to trade.'')

[146] One commenter stated that FINRA should be required to demonstrate that the benefits of the proposal are so substantial and clear to overcome the strong presumption that private actors in competitive markets are the best means of providing goods and services. *See supra* note 54 and accompanying text. Pursuant to the Act, the Commission must approve an SRO's proposed rule change if it finds that such proposed rule change is consistent with Act and the rules and regulations issued thereunder that are applicable to such organization. *See* Section 19(b)(2)(C)(i) of the Act. For the reasons set forth herein, the Commission finds that FINRA has made such a showing.

[147] *See supra* Section III.A and notes 90–104 and accompanying text for a discussion of concerns about information asymmetry in the corporate bond market today that can disadvantage many market participants; and note 145 and accompanying text. As discussed above, timely availability of this data should promote (i) competition, (ii) improve secondary market liquidity and lower cost of capital and (iii) lower other costs. In addition, FINRA has clearly and explicitly stated that it will provide guidance in the course of new rule implementation to provide any further clarification required regarding data fields, and will engage with market participants as required to provide such guidance. FINRA has also clearly and explicitly stated that it will engage with market participants on the appropriate business requirements for the reporting process and has stated that it may take a phased approach to implementation to promote compliance and data accuracy. *See supra* notes 125–127 and accompanying text.

[148] *See* Petitioner Letter, at 9–10.

[149] *See* Petitioner Statement at 23.

[150] *See* Petitioner Statement, at 24.

further stated that private vendors will have a diminished incentive to gather, verify, organize, maintain, and provide reference data information, and that FINRA will not have the financial incentive to do so in a cost-effective manner or to improve its technology for collecting or distributing bond data, and, as a result, traders' cost for bond reference data may increase.[151] Another commenter opposed giving FINRA or any other utility or vendor a monopoly or competitive advantage in the collection and dissemination of corporate bond new issue reference data, stating that doing so may reduce the overall quality and timeliness, and increase the cost, of the data.[152] Petitioner suggested that FINRA should have considered alternatives to the proposal, including ''develop[ing] certification criteria for vendors, or common data standards for underwriters, at far less cost than the construction of a new service, and at far less risk of a single point of failure'' [153] and stated that the proposal violates the Act because it does not foster cooperation with existing data vendors and providers.[154]

Petitioner and another commenter stated that the proposal creates a conflict of interest for FINRA and reduces FINRA's standing as an independent regulatory force.[155] The other commenter stated that FINRA has a pecuniary interest in promulgating the proposal and ''can use its regulatory authority to force underwriters to provide it with information and then sell the information to market participants at a profit.'' [156] On the other hand, FIMSAC stated it would be concerned by any alternative construct to FINRA's proposal that would give increased market power to a single commercial data provider without a commensurate level of regulatory oversight.[157]

A number of commenters questioned the quality of FINRA's current TRACE data, and pointed to a recent study that found that approximately 20% of entries had errors.[158] Petitioner stated that ''[t]he best predictor of whether FINRA will be able to run an accurate data system is its experience with the TRACE system, an existing system that is simpler than the as-yet-unbuilt system FINRA proposes'' and that ''[n]othing in the record supports any inference that FINRA's new system would outperform the 20% error rate cited in the . . . Tabb Study.'' [159]

2. FINRA Response to Comments

In response to comments that private vendors should continue to provide this information rather than a single SRO,[160] FINRA stated that ''[a] key element of the [p]roposal is that FINRA, as a not-for-profit SRO, will provide a limited set of essential corporate bond new issue reference data as a public market utility on timely, reasonable, and non-discriminatory terms to anyone who chooses to receive it.'' [161] FINRA noted that, in contrast, ''the private data vendors that today provide corporate bond new issue reference data are not bound by similar obligations, and the FIMSAC expressed particular concern that a dominant private data vendor has refused to license data, or has withheld it selectively, for anti-competitive reasons.'' [162] FINRA stated that the current disparity among vendor access to reference data results from competitive barriers in the current market, ''as underwriters have relatively few incentives to report to data vendors other than the prevalent incumbent data vendor, *i.e.,* Petitioner.'' [163] FINRA further noted that the FIMSAC was particularly concerned that ''a dominant private vendor's ability to restrict access to new issue reference data has immediate and direct downstream impacts on the ability of other market participants to perform critical market functions such as pricing, trading, clearing, and settling new issues once the bonds begin trading in the secondary market.'' [164] FINRA stated that comments from members and panelists at the FIMSAC meeting also provided support for the Subcommittee's recommended solution that FINRA establish and operate a consolidated, regulated data service.[165] Furthermore, FINRA noted that the FIMSAC reaffirmed FINRA as ''the most logical and impartial choice'' to

[151] *See* Petitioner Letter III, at 5–6; Petition for Review, at 31. This commenter further stated that the proposed centralized data service could achieve a dominant position regardless of whether an innovating company could have done a better job and that the proposed database, run as a ''regulatory utility,'' is likely to produce a service less valuable than what market-based providers would produce. *See* Petitioner Statement, at 37.

[152] *See* Letter from Larry Tabb, TABB Group, dated May 15, 2019 (''Tabb Letter''), at 3. *See also* Petitioner Letter V, at 2.

[153] *See* Petitioner Statement, at 24.

[154] *See* Petitioner Statement, at 20.

[155] *See* Petitioner Letter IV, at 5; Heritage Letter V, at 2. *See also* Petitioner Statement, at 31 (''The [proposal] . . . creates an inherent conflict between a public regulator and the private parties it regulates.'').

[156] *See* Heritage Letter V, at 2. *See also* Petitioner Statement, at 31 (stating that pursuant to the proposal, FINRA ''would coerce underwriters to surrender bond-reference data and would (at least implicitly) compel broker-dealers to buy FINRA's data'' and that if the proposed database costs more than expected or does not achieve the purported benefits, FINRA may be motivated to take steps to save its own finances that, ''as a regulator, it is uniquely empowered to take.''). In Section III.F below, the Commission discusses comments regarding FINRA's potential fees for this service.

[157] *See* FIMSAC Letter, at 4. The FIMSAC stated that data vendors are conflicted by competing commercial interests and should not be in a position to determine who can have access to data necessary to value, trade and settle a newly issued corporate bond. *See id.* Petitioner, which has both a data business and an electronic bond trading platform, responded to this comment, stating that there is no basis for FIMSAC's claims that integrated firms are using their data business to harm competition in trading. Petitioner pointed to data showing that it holds only 3.2% of market share of domestic institutional electronic corporate bond trading, and argued that these data contradict any suggestion that the commenter has leveraged its data business to gain a competitive advantage for its electronic trading business. *See* Petitioner Letter II, at 2–4.

[158] *See, e.g.,* Healthy Markets Letter II, at 5; Petitioner Letter III, at 5–6; and Petitioner Letter IV, at 4 (citing to Larry Tabb, Tabb Forum, ''An SEC-Mandated Corporate Bond Monopoly Will Not Help Quality'' (Mar. 21, 2019) (''Tabb Study'')). *See also* Petitioner Statement, at 29.

[159] *See* Petitioner Statement, at 30.

[160] *See supra* notes 148–152 and accompanying text.

[161] *See* FINRA Statement, at 2.

[162] *See* FINRA Statement, at 2 (citing Recommendation, *supra* note 30). In response, Petitioner stated that it submitted the Petitioner Motion and Declarations to rebut FINRA's allegations of anti-competitive conduct. Specifically, Petitioner stated that the Declarations demonstrate that Petitioner does not restrict access to its reference data service based on firms' willingness to use any of its trading services, or for any other anti-competitive reasons, and that Petitioner makes its reference data service broadly available on standard terms for standard use cases. *See* Petitioner Motion, at 10. FINRA, on the other hand, stated that the Declarations do not directly address the specific concerns expressed by the FIMSAC and are immaterial in light of the well-developed record. *See* FINRA Opposition, at 6–7.

[163] *See* FINRA Statement, at 12.

[164] *See* FINRA Statement, at 2–3 (citing Recommendation, *supra* note 30). FINRA further stated that Petitioner is the dominant private data vendor in today's market for corporate bond new issue reference data and ''often gains access to new issue reference data before other vendors and market participants.'' *See* FINRA Statement, at 3. In response, Petitioner stated that neither the Recommendation nor the FIMSAC Letter suggested that one dominant private data vendor engaged in anti-competitive activity. *See* Petitioner Motion, at 3. In addition, Petitioner stated that the Declarations ''conclusively rebut the notion that Petitioner engages in an anticompetitive leveraging of the new bond issuance functionality on the Petitioner Terminal service to gain preferential access to reference data.'' *See* Petitioner Motion, at 9. On the other hand, FINRA stated that the Declarations neither directly address nor dispel the concerns expressed by the FIMSAC and others that underlie the proposed rule change. *See* FINRA Opposition, at 6–9.

[165] Specifically, FINRA pointed to (i) a statement by Larry Harris, USC Marshall School of Business, that ''FINRA is best equipped to solve this problem;'' and (ii) a statement by Bob LoBue, J.P. Morgan, that the firm ''could probably populate [its existing process for providing new issue reference data to FINRA] a little bit deeper.'' *See* FINRA Statement, at 9 (citing to FIMSAC Transcript, *supra* note 36).

establish and operate the data service in its comment letter, as FINRA would provide the data impartially ''to all market participants on objective and non-discriminatory terms.'' [166] While FINRA acknowledged that the proposed data service may create a potential single point of failure,[167] FINRA stated it continues to believe any concerns about the risks of consolidation do not outweigh the benefits of the data service, and that vendors are likely to continue collecting corporate bond new issue reference data.[168]

In response to comments that there exist alternatives to the proposal that would be less costly,[169] FINRA noted that it considered alternatives and explained its rationale for the choices it made in its proposal.[170] FINRA further stated that Petitioner's analysis that an SRO's proposed rule change cannot be approved if some alternative might also accomplish the same goal is flawed.[171]

In response to comments regarding alleged conflicts of interest and FINRA acting in a commercial rather than a regulatory role,[172] FINRA stated that, as a non-profit registered securities association and SRO, it does not intend to compete with or displace private data vendors.[173] FINRA added that it did not initiate the proposal for commercial benefit but did so in response to a specific recommendation and regulatory need identified by the FIMSAC.[174] FINRA stated that the proposal is designed to achieve a clear regulatory objective—to provide more timely and accurate consolidation and dissemination of key corporate bond new issue reference data.[175] Furthermore, FINRA noted that under Section 15A of the Act, it is charged with a number of responsibilities including, among others, removing impediments to a free and open market and fostering clearance, settlement, and information processing with respect to transactions in corporate bonds and other securities.[176] FINRA stated that, in light of this mandate, the collection, consolidation and dissemination of fundamental security information is not a novel role for a registered securities association, and FINRA routinely provides other types of basic security information to the marketplace to, among other things, facilitate the clearing and settlement of securities and improve transparency.[177] FINRA also noted that SRO regulation of new issue reference data is not novel, as the same kind of new issue reference data for municipal bonds are made available under rules adopted by the MSRB, which is charged with a similar mandate as FINRA in the municipal securities market.[178] FINRA concluded that it believes that the establishment of a corporate bond new issue reference data service fits squarely within the scope of FINRA's affirmative regulatory authority under the Act.[179]

In response to comments concerning the risk of consolidating the proposed corporate bond new issue reference data with FINRA and the timeliness and accuracy of current TRACE data,[180] FINRA stated that there is key information missing from the analysis on which these commenters rely, and without such information it is difficult for FINRA to provide a meaningful response to the analysis.[181] FINRA stated that based on its own review of TRACE and the same vendor's data, FINRA found different results, including a significant number of instances where it received data not yet available from the vendor.[182] FINRA also stated that it would expect substantially fewer reconciliation differences if the proposal is approved because FINRA believes a number of the differences found in the analysis may have resulted from data fields that are not currently system-validated.[183] In contrast, FINRA stated that the corporate bond new issue reference data fields would become system-validated under this proposal, as FINRA would employ systemic and operational checks for all of the data fields to determine if any fields are either missing or not conforming to expected format or standards at the time of submission.[184] Furthermore, FINRA stated that FINRA's long history of successfully providing critical TRACE data to the markets since 2002 negates any concerns about TRACE' s accuracy.[185]

3. Commission Discussion and Findings

a. Centralized Database Provider

The Commission believes that FINRA is an appropriate entity to operate a centralized database for newly issued corporate bond reference data because of its status as a regulated SRO and its

[166] *See* FINRA Statement, at 9–10 (citing the FIMSAC Letter). FINRA further noted that the FIMSAC articulated a ''concern that certain large reference data providers 'have in the past, and could in the future, manage their data and trading businesses in a coordinated fashion—refusing to license their leading reference data products to trading platforms that they deem to be competitive with their own.' '' *See id.* at 10 (citing FIMSAC Letter, at 3–4).

[167] *See supra* note 153 and accompanying text.

[168] *See* Response Letter, at 10. However, one commenter stated that FINRA offers no reason why vendors would continue to fund their own research in addition to paying for FINRA's information. *See* Petitioner Letter V, at 3. *See also* Section III.E for a discussion of the proposal's impacts on competition.

[169] *See supra* note 153 and accompanying text.

[170] *See* FINRA Statement, at 25. *See also* Notice, at 13979 (''FINRA alternatively considered maintaining the Rule's phased reporting approach for offerings in corporate debt securities subject to the proposal, with certain core information required prior to the first trade and an extended 60-minute window for remaining information, given the additional data fields that would be required to be reported under the proposal. However, FINRA believes that the proposed approach to require uniform pre-first trade reporting better supports the stated goals in the FIMSAC Recommendation to increase the efficiency of the corporate bond market and promote fair competition among all market participants.''); 13982–83 (''FINRA also considered whether there was an appropriate alternative approach that involved an expansion of the DTCC's NIIDS service to include corporate new issue reference data. However, based on operational and commercial reasons, including inefficiencies with integrating the existing FINRA reporting infrastructure with a separate DTCC infrastructure, FINRA concluded that expanding the current existing FINRA reporting and dissemination framework was a more effective and efficient approach . . .'').

[171] *See* FINRA Statement, at 25.

[172] *See supra* notes 155–157 and accompanying text.

[173] *See* Response Letter, at 10.

[174] *See id.*

[175] *See id.*

[176] *See* FINRA Statement, at 2; Response Letter, at 9. *See also* Section 15A(b)(6) of the Act, 15 U.S.C. 78*o*–3(b)(6).

[177] *See* Response Letter, at 9–10. For example, FINRA makes available to the public all transaction data in corporate bonds through TRACE. *See* FINRA's TRACE Overview, available at *https://www.finra.org/sites/default/files/TRACE_Overview.pdf. See also* FINRA Statement, at 2. FINRA also makes details about corporate and agency debt securities available to FINRA members and provides a tool to the public that enables them to analyze and compare the costs of owning mutual funds. *See* TRACE OTC Corporate Bonds and Agency Debt User Guide, available at *https://www.finra.org/sites/default/files/TRAQS-CA-user-guide-v4.7.pdf.pdf;* FINRA Fund Analyzer, available at *https://tools.finra.org/fund_analyzer/.*

[178] *See* FINRA Statement, at 2.

[179] *See* FINRA Statement, at 2.

[180] *See supra* notes 148, 158–159 and accompanying text.

[181] *See* Response Letter, at 10–11; FINRA Statement, at 23–22. Specifically, with respect to the Tabb Study cited by certain commenters, FINRA stated that it is not clear what TRACE data was used for the analysis or which point in time during the trading day was used to compare TRACE data with the vendor's data. In addition, FINRA stated that the analysis does not explain which of the two sources (TRACE or the vendor) were deemed accurate (it only references ''reconciliation differences'') or whether the differences included cases where data were not present yet in either system. *See id.* In response, Petitioner stated that FINRA's response is ''puzzling'' as the Tabb Study states that it used the ''initial release'' of FINRA's own ''TRACE Corporate and Agency Master file,'' and stated that neither FINRA nor any other commenter contests that the concern is with the inaccuracy of FINRA's data. *See* Petitioner Letter V, at 2.

[182] *See* Response Letter, at 10–11; FINRA Statement, at 23–22.

[183] *See id.*

[184] *See id.* In response, Petitioner stated that FINRA's reliance on unspecified ''system-validated'' data is not enough to refute the historical evidence of ''a high error rate for comparatively simple data.'' *See* Petitioner Letter V, at 3.

[185] *See* FINRA Statement, at 24.

accompanying regulatory obligations, and because of its demonstrated experience with the establishment and maintenance of databases used by the public.[186] There is an information asymmetry in the market for newly issued corporate bond reference data.[187] Specifically, there is a lack of broadly available and accessible new issue reference data on the first day of secondary market trading that impedes the efficiency and competition in the current marketplace.[188] The Commission finds that FINRA's proposed reporting requirements and dissemination protocol of such data are reasonably designed to address this information asymmetry by facilitating access to timely and accurate new issue corporate bond reference data, consistent with Section 15A of the Act.[189]

The Commission believes that FINRA's status as an SRO will help ensure that it operates the New Issue Reference Data Service in a manner that will address the current information asymmetry in reference data availability on the first day of secondary market trading. Importantly, Section 15A of the Act will require FINRA to provide the New Issue Reference Data Service to market participants in a manner that is not unfairly discriminatory and on terms that are equitable and reasonable.[190] Furthermore, as an SRO, the Commission oversees FINRA to ensure that it is carrying out its regulatory responsibilities. The Commission has the ability to review FINRA's proposed rule changes for consistency with the Act, which would include any proposed changes with respect to the operation of the New Issue Reference Data Service and, as discussed below, any proposed fees for accessing the database.[191] The Commission also oversees FINRA through inspections of its operations and programs. Finally, FINRA has an obligation to operate consistent with requirements under the Act and with its own rules, and is required to enforce compliance by its members with the federal securities laws and FINRA's own rules.[192]

In addition to being subject to a comprehensive regulatory regime, FINRA has extensive experience with collecting data from its members and disseminating such data to the public. For example, TRACE, which FINRA has operated since 2002, provides information to investors and other market participants about secondary market trades in corporate bonds and other debt securities that it collects from its member firms. Currently, TRACE disseminates information to the marketplace about corporate bond trades, including trade price and size, immediately upon receipt.[193] U.S. secondary trading markets have greatly benefitted from the increased transparency that have resulted from FINRA's establishment, management and expansion of TRACE.[194] In addition, FINRA currently operates the Order Audit Trail System (''OATS''), which was established in 1996.[195] Pursuant to FINRA Rules, FINRA's members report data to OATS to create an integrated audit trail of order, quote, and trade information for all NMS stocks and OTC equity securities.[196] The Commission believes that the New Issue Reference Data Service would be an appropriate extension of the data services that FINRA provides to the public and would benefit from FINRA's experience in collecting and disseminating data to the public; the Commission also notes that the proposal is limited to reference data regarding TRACE-eligible bonds.[197]

[186] *See infra* notes 193–197 and accompanying text.

[187] As discussed above, in the corporate bond market today, the Commission understands from market participants that Petitioner typically has the timeliest access to newly issued bond reference data on the first day a bond trades, as it enjoys the voluntary cooperation of underwriters. *See supra* note 91. While market participants and others have expressed concerns that Petitioner is engaged in anti-competitive conduct in the market for newly issued corporate bond reference data, the Commission is not making any findings herein regarding whether Petitioner has actually engaged in such conduct. *See supra* notes 162 and 164 and accompanying text.

[188] In contrast to the corporate bond market, the municipal securities market and Treasury market have centralized mechanisms in place that provide market-wide access to information about newly issued securities on the first day of trading. MSRB Rule G–34 requires municipal securities underwriters to submit new issue information for municipal bonds to the New Issue Information Dissemination Service (''NIIDS''), which is operated by the Depository Trust and Clearing Corporation (''DTCC''). The FIMSAC noted that this information includes ten data elements required to set up an issue in the NIIDS, as well as up to 70 additional data elements. *See* Recommendation, at 1. In the Treasury market, the U.S. Department of the Treasury publishes details about upcoming issuances in a new issue calendar and immediately following each auction.

[189] *See supra* Section III.A.3 and Section III.B.3. One commenter argued that FINRA should have considered alternatives to the proposal to address information asymmetries in the market for newly issued corporate reference data. But, as discussed above, the Act requires that the Commission approve an SRO's proposed rule change if it finds that such proposed rule change is consistent with Act and the rules and regulations issued thereunder that are applicable to such organization. *See* Section 19(b)(2)(C)(i) of the Act. For the reasons set forth herein, the Commission finds that FINRA has made such a showing.

[190] *See* 15 U.S.C. 78*o*–3. *See also* FIMSAC Letter, at 3 (recognizing the importance of the operator of a reference data to be subject these standards of conduct).

[191] Pursuant to Section 15A of the Act, FINRA, as a registered securities association, must establish rules that generally: (1) Are designed to prevent fraud and manipulation, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; (2) provide for the equitable allocation of reasonable fees; (3) do not permit unfair discrimination; (4) do not impose any unnecessary or inappropriate burden on competition; and (5) with limited exceptions, allow any broker-dealer to become a member. *See* 5 U.S.C. 78s(g).

[192] *See* 5 U.S.C. 78s(g).

[193] *See* FINRA Regulation Notice 19–12 (April 12, 2019), available at *https://www.sec.gov/spotlight/fixed-income-advisory-committee/finra-regulatory-notice-trace-19-12.pdf.* In addition, FINRA makes details about corporate and agency debt securities available to FINRA members. *See* TRACE OTC Corporate Bonds and Agency Debt User Guide, available at *https://www.finra.org/sites/default/files/TRAQS-CA-user-guide-v4.7.pdf.pdf.*

[194] *See, e.g.,* FIMSAC Letter, at 3; Hendrik Bessembinder, William Maxwell, and Kumar Venkataraman, ''Market Transparency, Liquidity Externalities, and Institutional Trading Costs in Corporate Bonds,'' *Journal of Financial Economics* 82, 251–288 (2006), available at *https://doi.org/10.1016/j.jfineco.2005.10.002;* Michael A. Goldstein, Edith S. Hotchkiss, and Erik R. Sirri, ''Transparency and Liquidity: A Controlled Experiment on Corporate Bonds,'' *The Review of Financial Studies* 20, 235–273 (2007), available at *https://doi.org/10.1093/rfs/hhl020;* Amy K. Edwards, Lawrence E. Harris, and Michael S. Piwowar, ''Corporate Bond Market Transaction Costs and Transparency,'' *The Journal of Finance* 62, 1421–1451 (2007), available at *https://doi.org/10.1111/j.1540-6261.2007.01240.x;* and Dominique C. Badoer and Cem Demiroglu, ''The Relevance of Credit Ratings in Corporate Bond Markets,'' *The Review of Financial Studies* 32, 42–74 (2018), available at *https://doi.org/10.1093/rfs/hhy031.*

[195] *See* In the Matter of National Association of Securities Dealers, Inc., Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Exchange Act Release No. 37538 (August 8, 1996), Administrative Proceeding File No. 3–9056 and Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market LLC (''Nasdaq''). *See also* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (order approving proposed rules comprising OATS) (''OATS Approval Order'').

[196] *Id. See also* Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044) (order approving proposed rule change by FINRA relating to the expansion of OATS to all NMS stocks). While OATS data are not disseminated to the public, it is used by FINRA to recreate events in the lifecycle of an order and monitor the trading activity of member firms. *See https://www.finra.org/filing-reporting/market-transparency-reporting/order-audit-trail-system-oats.*

[197] The Commission also notes that the FIMSAC considered various alternatives to FINRA in its deliberations, including private sector providers, and settled on FINRA because it believed that FINRA was the most logical and impartial choice because it is subject to regulatory oversight by the Commission and because of underwriters' existing reporting mechanisms with FINRA. *See* FIMSAC Letter, at 3.

b. Data Quality and Resilience

Some commenters have expressed concerns that the New Issue Reference Data Service will harm corporate bond reference data quality and resilience, noting that (1) it would create a single point of failure, (2) FINRA would not be incentivized to maintain high quality data, and (3) current error rates in TRACE is evidence that FINRA's reference database will not be reliable.[198] The Commission is not persuaded by these arguments. Regarding concerns about a single point of failure, it is not clear to the Commission that FINRA's New Issue Reference Data Service will indeed be a single point of failure.[199] While some have suggested that FINRA's proposal would increase efficiencies due to the consolidation of reference data within one entity,[200] it is the Commission's judgment that it is premature to draw conclusions about the impact of FINRA's proposal on the manner in which underwriters currently distribute data or how other data vendors conduct business or customers' demand for other data vendors' services. FINRA's proposal does not disrupt the ability of underwriters to continue reporting new issue reference data to data vendors. Because underwriters already have these data reporting processes in place and have incurred the costs of establishing those processes, underwriters may choose to continue to provide new issue reference data to data vendors as well as to FINRA. Should that be the case, private data vendors will continue to be incentivized to invest in their current methods of collection and distribution and concerns about a single point of failure will be mitigated. If market participants do in fact change their current practices and report new issue reference data to FINRA only,[201] the Commission believes that FINRA's experience with establishing and maintaining databases such as TRACE and OATS and the Commission's regulatory oversight of FINRA will ensure that the New Issue Reference Data Service is designed and operated consistent with the Act.[202]

The Commission also believes that FINRA will be incented to build and maintain a high quality New Issue Reference Data Service. As discussed previously, it is possible that the current business processes for new issue reference data distribution remain, which would impose competitive pressures on FINRA to provide high quality new issue reference data. If FINRA does become the sole source of new issue reference data, however, the Commission believes that FINRA will build and maintain a high quality New Issue Reference Data Service, mitigating concerns about data quality and resilience, because of (i) FINRA's experience with the establishment and maintenance of databases such as TRACE and OATS, (ii) its status and regulatory obligations as a regulated SRO, and (iii) the Commission's oversight of FINRA, including our inspection and examination functions.

Finally, the Commission is not persuaded that commenters' concerns about error rates in TRACE data call into question the ability of FINRA to build and maintain a reliable reference database. As discussed above, commenters have expressed concerns about FINRA's proposed reference database, arguing that ''reconciliation differences'' show that FINRA's current collection of bond data contains a high incidence of errors.[203] On the other hand, FINRA has argued that ''reconciliation differences'' do not necessarily mean errors nor demonstrate that FINRA's current collection of data has a high incidence of errors.[204] Furthermore, FINRA states that it found different results based on its own review of TRACE data, including a significant number of instances where it received data not yet available from the vendor.[205] This FINRA analysis suggests that a number of the ''reconciliation differences'' deemed to reflect FINRA errors may in fact be the simple result of FINRA possessing certain data that was not yet available to the vendor.

Moreover, the Commission does not believe that the disputed comments concerning existing TRACE error rates call into question the ability of FINRA to build and maintain a reliable reference database for the following additional reasons.[206] First, as discussed above, FINRA has an established track record of creating reliable databases of information gathered from its member firms and made available to the public.[207] Additionally, FINRA has explicitly and clearly stated that it will engage with market participants on the appropriate business requirements for the reporting process, it intends to implement functionality to allow for underwriters to correct previously submitted data to FINRA for a significant period after receiving the initial Rule 6760 submission, it may take a phased approach to implementation to promote compliance and data accuracy, and data reported to FINRA will be system-validated.[208] The Commission expects FINRA to do these things and believes that FINRA is committed to establishing a reliable reference database, consistent with its statutory and regulatory obligations under the Act, and the Commission will continue to monitor closely FINRA's work and implementation of the New Issue Reference Data Service.[209] Furthermore, as discussed above, the Commission oversees FINRA as an SRO and, to the extent that it is operating the database in a manner that violates the Act or the rules and regulations thereunder, the Commission will have recourse.

D. Burden on Underwriters

1. Comments on the Proposal

Commenters expressed concerns about how FINRA's proposal might impact the underwriters that will be required to provide FINRA with new reference data elements for newly issued corporate bonds. One commenter argued that the proposal would increase regulatory and liability burdens for

[198] *See supra* notes 148, 151–152, and 158–159 and accompanying text.

[199] The Commission believes that data vendors will continue to compete for the provision of data services and expects that market participants will turn to a variety of sources for their data needs depending on the facts and circumstances at hand. *See* infra Section III.E for a discussion of the proposal's impact on competition.

[200] *See, e.g., infra* note 216 and accompanying text.

[201] *See, e.g.,* FIMSAC Letter, at 3 and *infra* note 216 and accompanying text (describing the potential for underwriters to change their current practices by reporting reference data to FINRA only).

[202] As discussed above, the Commission oversees FINRA by, among other things, conducting inspections of its operations and programs to examine whether FINRA is operating consistent with Act requirements and its own rules. *See supra* Section III.C.3.a.

[203] *See supra* notes 158–159 and accompanying text.

[204] In particular, FINRA states that the analysis does not explain which of the two sources (TRACE or the vendor) were deemed accurate (it only references ''reconciliation differences'') or whether the differences included cases where data were not present yet in either system. *See* Response Letter, at 11.

[205] *See id.*

[206] The Commission is not taking a position on the accuracy of either commenters' or FINRA's statements regarding error rates.

[207] *See supra* notes 193–197 and accompanying text.

[208] *See* Response Letter, at 11–15.

[209] In addition, as discussed below, the Commission believes that data vendors will likely continue to compete in the market for data. In addition to potentially competing in the market for new issue reference data by operating as they do today, these data vendors will also continue to compete based on differing value added services related to the required information and also based on additional data fields, data updates, and services related to the data and that such competition should continue to spur innovation and allay concerns regarding a single point of failure and error rates. *See infra* Section III.E.3.

underwriters without any clear benefit.[210] This commenter and Petitioner argued that the proposed rule's compliance burden would disproportionately impact smaller underwriters.[211] Another commenter stated that FINRA should be required to demonstrate ''that the benefits to information purchasers [of the proposal] would materially outweigh the unrecompensed costs imposed on underwriters.'' [212] Petitioner argued that FINRA must include information regarding underwriter's costs of preparing for new infrastructure and compliance obligations.[213]

On the other hand, FIMSAC stated that it heard from underwriters that it would be relatively easy for them to report the new issue reference data to FINRA given their current established reporting mechanisms to TRACE and that underwriters could thereby avoid the duplicative effort involved in sending the same data multiple times to various reference data providers.[214]

2. Response to Comments

In its proposal, FINRA stated that ''[b]ased on conversations with underwriters, FINRA understands that underwriters do not anticipate incurring significant costs for reporting under this proposal.'' [215] In addition, FINRA acknowledged the concern that underwriters that underwrite fewer deals may be disproportionally burdened if there are fixed costs associated with amending an underwriter's reporting system to meet the additional requirements of the proposal, but stated that any such additional burden ''may be alleviated because reporting to FINRA would reduce or eliminate the need for underwriters to report to other parties, or by the fact that underwriters can leverage investments already made in the existing reporting system necessary under Rule 6760.'' [216]

3. Commission Discussion and Findings

The Commission believes that any burdens imposed on underwriters by the proposal, including smaller underwriters, would be limited because of such underwriters' existing data collection and reporting practices with respect to the information FINRA proposes to be reported.[217] First, the Commission believes, and no commenter has disputed, that all underwriters, including small underwriters, should be able to leverage their existing infrastructure used to connect and report to FINRA with respect to the information required under the proposal. Underwriters today are already required to report certain data elements related to new issue bonds to FINRA pursuant to the requirements of current Rule 6760.[218] All underwriters of Corporate Debt Securities, as defined in FINRA's rules, have already developed data reporting mechanisms to FINRA for purposes of transmitting required data concerning these securities.[219]

Second, the Commission believes that underwriters today are already collecting the additional information required under the 32 data elements in the proposal, and are already reporting such information to at least one private vendor on the first day a bond trades, given the need for this information by investors in the newly issued bond's primary offering.[220] Underwriters should be able to leverage their existing data collection and reporting infrastructures to FINRA and private data vendors in order to meet their obligations under the proposal to report additional information to FINRA.[221] Furthermore, because underwriters currently have infrastructure in place to report certain information to FINRA and the information required by the proposal to private data vendors, they are already incurring costs to update and maintain this existing infrastructure. As a result, the Commission believes the initial set-up costs resulting from the proposal on underwriters will be small and there would be no or very little additional ongoing costs as a result of the proposal that are not already being incurred by underwriters.

The Commission also notes that underwriters may also be able to efficiently leverage the services of third-party vendors to comply with FINRA's new reporting requirements, as one commenter suggested.[222] Moreover, the Commission believes that the incremental burden on underwriters to set up and maintain infrastructure to comply with FINRA's proposal, if any, is justified by the benefits to the market of eliminating information asymmetries, which should improve efficiency and competition.[223]

[210] *See* Chamber Letter, at 4 (''Underwriters would face potential liability for errors in reporting and calculation, while there is no clear benefit for this increased burden.''); Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated October 24, 2019 (''Chamber Letter III''), at 2.

[211] *See* Petitioner Letter IV, at 5. *See also* Chamber Letter III, at 3. Petitioner presented evidence of the size of underwritten investment grade corporate bonds in 2019, stating that ''through October 7, 33 underwriters have each underwritten more than $1 billion (notional) year to date, while 59 other underwriters also have priced issues during 2019—overwhelmingly for small issues of less than $25 million'' and stated that FINRA has failed to address the differential impact of the proposed new compliance burden on different sized underwriters. *See* Petitioner Letter IV, at 5, n.10.

[212] *See* Heritage Letter V, at 2.

[213] *See* Petitioner Statement, at 17–18

[214] *See* FIMSAC Letter, at 3. As discussed above, it is the Commission's judgment that it is premature to draw conclusions about the impact of FINRA's proposal on the manner in which underwriters currently distribute data. *See supra* notes 200–202 and accompanying text.

[215] *See* Notice, at 13982.

[216] *See id.*

[217] *See, e.g.,* Recommendation, at 3 (''The FIMSAC recognizes that the creation of this service will impose costs on FINRA and the underwriters. Based on available information, the FIMSAC believes that the costs would be small relative to the value of the service as the required information to be reported is similar to the information that underwriters already provide directly to reference data vendors.''). *See also supra* notes 215–216 and accompanying text.

[218] Rule 6760(b), proposed to be renumbered as Rule 6760(b)(1), currently requires the following information to be reported to FINRA: (A) The CUSIP number or if a CUSIP number is not available, a similar numeric identifier (*e.g.,* a mortgage pool number); (B) the issuer name, or, for a Securitized Product, the names of the Securitizers; (C) the coupon rate; (D) the maturity; (E) whether Securities Act Rule 144A applies; (F) the time that the new issue is priced, and, if different, the time that the first transaction in the offering is executed; (G) a brief description of the issue (*e.g.,* senior subordinated note, senior note); and (H) such other information FINRA deems necessary to properly implement the reporting and dissemination of a TRACE-Eligible Security, or if any of items (B) through (H) has not been determined or a CUSIP number (or a similar numeric identifier) is not assigned or is not available when notice must be given, such other information that FINRA deems necessary and is sufficient to identify the security accurately. *See* FINRA Rule 6760.

[219] Indeed, the purpose behind FIMSAC's recommendation to have FINRA establish this database, as opposed to another entity, was to minimize any burdens on underwriters by utilizing existing reporting infrastructures. *See* Recommendation *supra* note 30; FIMSAC Letter, at 3.

[220] *See supra* note 91. The Commission believes that it would be rare for an underwriter involved in the distribution of debt securities to be able to act as an underwriter and broker-dealer without having this information immediately available for its engagement with customers. Additionally, the Commission understands that technical implementation may require a phased approach, as stated by FINRA, to promote compliance and data accuracy. *See* Response Letter, at 15; *supra* notes 125–127 and accompanying text (describing FINRA's implementation plans).

[221] One commenter raised concerns about underwriters facing potential liability for errors in reporting. *See supra* note 210. While the Commission recognizes that underwriters may be subject to antifraud liability or FINRA enforcement actions, the Commission notes that the information to be provided to FINRA under this proposal is a subset of the information underwriters currently provide to investors in the primary offering. For this reason, the Commission believes that the risk of potential additional liability for reporting this subset of information to FINRA is minimized.

[222] *See* IHS Markit Letter, at 3.

[223] *See supra* Section III.B.3. *See also* FIMSAC Transcript, *supra* note 36, Comments from Larry Harris, at 0111 (noting that the burden on underwriters ''though it might be twice as large, is

Continued

Finally, the proposal would require uniform pre-first trade reporting to FINRA. Currently, for information reported under Rule 6760 for trade reporting purposes, the rule generally requires pre-first trade reporting but allows some information to be reported within 15 minutes of the first-trade.[224] The Commission recognizes that there may be an incremental burden on underwriters to report certain information earlier than they were previously required; however, the Commission believes this burden will be mitigated both by the existence of current reporting infrastructures discussed above and the fact that the data elements to be reported are already in the possession of underwriters, given the use of this information in the newly issued bond's primary offering.

E. Competition

1. Comments on the Proposal

Several commenters argued that the proposal fails to adequately explain why the rule's burden on competition is necessary or appropriate consistent with Section 15A(b)(9) of the Act.[225] A number of commenters asserted that the proposal would inappropriately displace competition among private sector reference data providers, which would impose costs on the market and could ultimately impede the quality of data available to market participants.[226] Petitioner stated that the proposal would ''both limit vendors' demand and make it harder for vendors to obtain and distribute information from underwriters mandated to provide the information to FINRA.'' [227] Petitioner stated that the proposal would establish a rival data service that would be a ''government-privileged quasi-monopoly enjoying the advantage of compulsory access to data that market-based services must compete for.'' [228] This commenter argued that ''[s]upplanting the current competitive system in favor of a compulsory government service'' is inconsistent with the Act.[229]

Petitioner stated that the proposal ''would expand a key regulator's commercial role into new lines of heretofore competitive private business'' and stressed ''the likely chilling effect that this would have on investment and innovation.'' [230] This commenter stated that the proposal would chill future innovation and investment ''through the threat of SROs commandeering private markets'' and that ''FINRA's willingness to enter new markets and provide new services undermines the incentives for private actors to invest and innovate.'' [231] Petitioner stated that it and other similar companies have spent ''tens of thousands of hours and millions of dollars over decades building attractive bond-reference data services'' and that ''FINRA's attempt to appropriate the space would cause incumbent providers to hesitate before investing more in capital-markets innovation.'' [232]

In contrast, commenters asserted that because of the limited set of data proposed to be captured by FINRA, the proposal would not supplant private sector market data providers.[233] One of these commenters asserted that providing reference data in a manner similar to that proposed by FINRA promotes competition by reducing costs and barriers to entry for new entrants in the reference data provider market.[234] This commenter noted that data vendors currently sell reference data products that provide data in addition to FINRA's proposed required data fields.[235]

2. FINRA Response to Comments

In response, FINRA reiterated that the proposed data service is not designed to affect the opportunity for private third party vendors to compete and is rather intended to promote competition among new reference data providers by, among other things, lowering barriers to entry and allowing competition on other dimensions, such as additional fields, updates to existing data based on subsequent events related to the security, presentation, ease of access, and integration with other data sets and systems deemed valuable by market participants.[236] FINRA stated that its proposed data service is narrowly tailored to provide only the basic fields of reference data that are essential for trading and settling newly issued corporate bonds.[237] FINRA argued that because of the proposal's narrow scope, it would not interfere with private data vendors' ability to compete to provide more enriched and value-added data, including data with supplementary fields and other value-added services.[238]

FINRA noted that several commenters responding to the proposal, including those that operate alongside Petitioner in both the markets for reference data and trading services, agreed that the proposal would not displace reference data providers or chill private market investments and would instead enhance competition among market participants, level the playing field, and reduce overall costs.[239] FINRA also noted that competition among reference data providers continues to exist in the municipal bond market, where there has long been a centralized, SRO-mandated data service similar to that proposed by FINRA.[240]

FINRA also stated that a key indicator of enhanced competition is the ability to reduce prices,[241] and noted that a number of market participants stated that the proposal will lower the costs to obtain new issue reference data.[242]

still extremely small and very, very small in comparison to the value of these data.'').

[224] *See supra* note 139.

[225] *See, e.g.,* Healthy Markets Letter II, at 5–6; Petitioner Letter III, at 8–11; Heritage Letter II; at 2–3; Petitioner Letter IV, at 4.

[226] *See* Heritage Letter, at 1–2; Heritage Letter V, at 3; Chamber Letter, at 2; Petitioner Letter, at 2–3; Healthy Markets Letter II, at 5; Tabb Letter, at 2–3. *See also* Petitioner Statement, at 3, 32–34.

[227] *See* Petition for Review, at 29.

[228] *See* Petitioner Statement, at 20.

[229] *See id.* at 21.

[230] *See* Petitioner Letter II, at 1. *See also* Petitioner Letter IV, at 5. This commenter compared the proposal to a previous FINRA proposal to create a facility to consolidate all quotation data in the over-the-counter equities market, which was ultimately withdrawn by FINRA. *See* Petitioner Letter V, at 3–4 (citing Securities Exchange Act Release No. 60999 (November 13, 2009), 74 FR 61183 (November 23, 2009) (SR–FINRA–2009–077) (Notice of Filing of Proposed Rule Change Relating to the Restructuring of Quotation Collection and Dissemination for OTC Equity Securities).

[231] *See* Petition for Review, at 28, 30. *See* Petitioner Statement, at 32–33; 36.

[232] *See* Petitioner Statement, at 38.

[233] *See* FIMSAC Letter, at 3; Harris Letter at 4.

[234] *See* Harris Letter, at 4.

[235] *See* Harris Letter at 4 (noting that such additional data include ratings and indications of whether an issuer is currently in default, in an agreement to merge, or negotiating such an agreement). One commenter who argued the proposal would diminish competition amongst reference data providers nevertheless stated that market participants currently demand more reference data fields than FINRA is proposing to collect. *See* Petitioner Letter, at 13–14.

[236] *See* Response Letter, at 8–9. *See also* Notice, at 13982.

[237] *See* FINRA Statement, at 3; Response Letter, at 9.

[238] *See* FINRA Statement, at 3–4; Response Letter, at 9.

[239] *See* FINRA Statement, at 4, 27; Response Letter, at 8 (citing to Harris Letter; FIMSAC Letter; ICE Data Letter; Charles River Letter). *See also supra* notes 233–234 and accompanying text.

[240] *See* FINRA Statement, at 4, 28.

[241] *See* FINRA Statement, at 25 (citing *SEC Staff Memorandum, Current Guidance on Economic Analysis in SEC Rulemakings,* at 11 (March 16, 2012)).

[242] Specifically, FINRA cited to statements at the FIMSAC meeting and comment letters submitted in response to the proposal noting that the status quo currently results in higher costs for customers and that the proposal will reduce overall costs. *See* FINRA Statement, at 25–26 (citing to statements of Frederic Demesy, Refinitiv, FIMSAC Transcript, *supra* note 36; Harris Letter, at 4; and Charles River Letter). As further discussed below, FINRA has expressly and clearly committed that its fees for the New Issue Reference Data Service will be cost-based. *See* FINRA Statement, at 18. In its filing with the Commission to adopt fees for the New Issue Reference Data Service, FINRA will be required to set forth why such cost-based fees meet the requirements of the Act, and the Commission will evaluate FINRA's eventual fee application based on

FINRA stated it believes the proposal will promote competition in the markets both for reference data and trading in that providing all data vendors with timely access to a basic set of new issue reference data will level the playing field and allow vendors to compete on other value-added dimensions, which in turn will lower the costs of timely and impartial access to essential data (a barrier to entry) for trading firms.[243] FINRA also argued that competition law is meant to protect competition, not competitors, and that a rule proposal does not burden competition in a market for services simply because it may impact the standing of one market competitor.[244]

3. Commission Discussion and Findings

The Commission believes that FINRA's proposal is designed to address an information asymmetry in the market for newly issued corporate bond reference data. Specifically, there is a lack of broadly available and accessible new issue reference data on the first day of secondary market trading that impedes the efficiency and competition in the current marketplace. The Commission believes that FINRA's proposal will improve competition among market participants, including investors, data vendors, and trading platforms, by providing all market participants with the ability to access the same investment products to meet their own business and investment needs or those of their customers at the time a bond becomes available in the secondary market. The Commission believes that the burden on competition imposed on private data vendors by the proposal should be minimal and is necessary or appropriate to further the purposes of Section 15A(b)(6) of the Act, namely to promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, newly issued corporate bonds.

First, as discussed above, the impact of FINRA's proposal on the manner in which underwriters currently distribute data or how other data vendors conduct business is uncertain. It is possible, for example, that FINRA's proposal could have a positive impact on competition by lowering barriers to entry among data providers and enabling them to compete on a more level playing field.[245] Additionally, for those vendors or market participants that may be getting reference data from underwriters directly, there is nothing in FINRA's proposal that prohibits underwriters from continuing to provide new issue reference data to data vendors as they do currently. Because underwriters already have these data reporting processes in place and have incurred the costs of establishing those processes, it is possible that despite the creation of a new database by FINRA, underwriters will continue to provide new issue reference data as they do today. Should that be the case, private data vendors will continue to enjoy the benefits of any investments made to acquire newly issued corporate bond reference data, which should limit any competitive impacts of FINRA's proposal.

If market participants do in fact change their current practices and report new issue reference data to FINRA only,[246] the Commission believes that FINRA's proposal will impose a limited burden on competition.[247] There is nothing in FINRA's proposal that would require market participants to purchase the reported data directly from FINRA. The FINRA proposal only applies to new issue corporate bond data and does not contemplate collecting and disseminating other data not collected by FINRA (as described further below) or updates to these data throughout the life of the bond. For this reason, the Commission believes market participants would continue to procure data provided by parties other than FINRA. In addition, the Commission believes that many market participants may ultimately continue to rely on their existing data vendors as a single source for all security-specific data and rely on those vendors to incorporate the data proposed to be collected by FINRA. Otherwise, these market participants could incur the costs of collecting and maintaining two data sets—the data available from FINRA and the range of other data available from other data vendors as discussed further below. Furthermore, the information that FINRA will require to be reported is a limited set of data, leaving data vendors with space to continue competing on a variety of fronts. For example, reference data providers could offer additional value add-ons with respect to data reported to FINRA, such as additional data concerning the newly issued bond, enhanced presentation, analytical capabilities, ease of access, and integration with other data sets and systems.[248] In addition, data vendors could offer additional services relating to the data, such as enhanced data scrubbing, if their customers demand such services. Indeed, as stated by one commenter, data vendors currently sell data products that provide data in addition to FINRA's proposed required data fields, and these additional data presumably provide value to their customers.[249] In addition, the Commission understands that data vendors currently offer various services beyond the initial supply of the data set, such as the integration of such data into other data sets and systems, and data vendors would presumably continue to offer such services relating to the required reference data.[250]

The Commission concludes that the limited set of data proposed to be reported and disseminated to allow for the identification, valuation and settlement of new issue corporate bonds is unlikely to supplant the demand for

the requirements of the Act and assess FINRA's proposed cost-based formula. *See infra* Section III.F.3.b.

[243] *See* FINRA Statement, at 12.

[244] *See* FINRA Statement, at 26. FINRA further argued that if an entity is a dominant incumbent and creates barriers to entry for users of its service, then impacting that entity's standing may be required to promote competition and relieve inappropriate burdens on competition. FINRA noted that the FIMSAC expressed particular concern that a dominant reference data vendor has limited other market participants' access to its data for anti-competitive purposes. *See* FINRA Statement, at 26 (citing FIMSAC Letter, at 4).

[245] *See* Notice, at 13981; FIMSAC Transcript, *supra* note 36, Comments from Frederic Demesy, Refinitiv, at 0078 (''[A]t the moment, we see that there are some market anomalies where some of the vendors have access to information much earlier than other vendors. And that creates basically competitive advantage on certain platforms, which is in my view not ideal for having a transparent market.''), Comments from Spencer Gallagher, ICE Data Services, at 0069–72 (''there is one area that no investment or no level of ingenuity can solve and that is equal access to new issue reference data at or prior to first trade execution''); Harris Letter, at 4–5 (describing anticipated pro-competitive impacts of the proposal on the data vendor market).

[246] *See supra* note 216 and accompanying text.

[247] As discussed in more detail in this section, the Commission expects that data vendors will continue to provide enhanced data services (*e.g.,* adding additional data and making various analytical calculations based on the data in the New Issue Reference Data Service) to customers, and that market participants will turn to a variety of sources for their data needs depending on the facts and circumstances at hand.

[248] *See, e.g.,* Response Letter, at 9.

[249] *See* Harris Letter at 4 (noting that such additional data include ratings and indications of whether an issuer is currently in default, in an agreement to merge, or negotiating such an agreement). Petitioner, who argued the proposal would diminish competition amongst reference data providers, nevertheless stated that market participants currently demand more reference data fields than FINRA is proposing to collect. *See* Petitioner Letter, at 13–14.

[250] For a description of various data vendor's bond reference data offerings, *see e.g. https://www.bloomberg.com/professional/product/reference-data/; https://www.theice.com/market-data/pricing-and-analytics/reference-data; https://www.refinitiv.com/en/financial-data/market-data/reference-data;* and *https://www.ftserussell.com/data/fixed-income-data.*

a more comprehensive reference database with enhanced data sets that contain additional fields not reported to or disseminated by FINRA and additional services related to such data not provided by FINRA.[251] The Commission believes that while FINRA's proposal will provide certain basic information for a bond on an impartial basis to market participants to allow for the identification, valuation, and settlement of newly-issued bonds, market participants will continue to require additional data and value-added services from reference data providers beyond what will be provided by FINRA. As such, the Commission believes that reference data providers will continue to compete and innovate in order to meet the additional needs of their customers, allaying commenters' concerns regarding potential increased costs, decreased data quality, and a chilling on investment and innovation.

For these reasons, the Commission believes that the potential benefits of the proposal discussed above, including furtherance of the purposes of Section 15A(b)(6), justify the minimal competitive burden on reference data vendors that may result from this proposal. The Commission thus finds that the proposal is consistent with Section 15A(b)(9) of the Act, and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

F. Fees

1. Comments on the Proposal

As discussed above, in Amendment No. 2, FINRA withdrew the proposed subscription fees for receipt of corporate new issue reference data from the proposal and stated that it would submit a separate filing to establish fees related to the new issue reference data service at a future date and will implement the service after those fees become effective.[252] In particular, several commenters believed that removal of fees from the proposal was problematic.[253] These commenters stated that eliminating the fees from the proposal amounts to procedural maneuvering in order to avoid scrutiny, as any subsequent fee filing submitted by FINRA will be immediately effective upon filing with the Commission.[254] Petitioner stated that ''FINRA should not be allowed to circumvent the Act's requirement of an affirmative finding of compliance with [Section] 15A(b)(5) by dodging the many comments critical of its unjustified fees.'' [255] This commenter further stated that ''[b]y segregating and delaying the fee justification, the [a]mended [p]roposal would relieve FINRA of the burden of proving the reasonableness of the fees and charges associated with its new service.'' [256]

In addition, these commenters stated that the proposed fees form a critical part of FINRA's proposed newly issued bond-reference data service and that the Commission and the public cannot assess whether the benefits of the proposal outweigh the costs and competitive burdens without knowing the fees that FINRA would charge for the service.[257] Petitioner further stated that FINRA has failed to provide any quantitative estimate for any costs that the proposal would impose.[258] This commenter stated that FINRA failed to include any information regarding the cost of developing and operating the new data system and provided no information about whether the costs of the service for traders will be higher or lower than current prices.[259] This commenter argued that FINRA must include information regarding the cost of building and operating the new reference data service, which FINRA proposes to pass on to market participants.[260] Petitioner concluded that ''lacking any evidence from FINRA about the costs of its proposed data service, the Commission cannot approve the [proposal] consistent with the requirements of the Act.'' [261]

Petitioner further stated that the Commission erred in the Approval Order by not making a finding under Section 15A(b)(5) of the Act that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which FINRA operates or controls.[262] This commenter stated that ''[t]o the extent the [Approval] Order suggests that requirement applies only to a 'proposed fee filing' . . . it is wrong'' and, rather, that Section 15A(b)(5) applies to *all* the rules of the national securities association.[263] Petitioner argued that the Commission must determine whether FINRA's current proposal provides for the equitable allocation of reasonable charges.[264]

[251] *See* FIMSAC Letter, at 3. There are many other data provided by reference data providers concerning a bond issue, such as issuer information (*e.g.,* fundamentals data, capital structure data), specific bond rating, bond trade and selling restrictions, classification data (industry, legal entity, etc.), corporate action data, ESG (Environmental, Social & Governance) data, dividend data, instrument analytics data, and security ownership data. *See e.g.,* IHS Markit Reference Data Bonds Factsheet, available at *https://cdn.ihs.com/www/pdf/Reference-Data-Bonds-factsheet.pdf;* Bloomberg Reference Data Content and Data, available at *https://www.bloomberg.com/professional/product/reference-data/.*

[252] *See* Amendment No. 2, at 4.

[253] *See* Petitioner Letter IV, at 6–9; Chamber Letter III at 2–3; Letter from John Thornton, Co-Chair, et al., Committee on Capital Markets Regulation, dated October 22, 2019 (''Committee Letter II''), at 2–3; Committee Letter III, at 2; Heritage Letter III, at 2–3; Healthy Markets Letter III, at 2; SIFMA Letter III, at 3–4; Petitioner Letter V, at 4–5; Petitioner Statement, at 34–36.

[254] *See* Petitioner Letter IV, at 6–9; Chamber Letter III at 2–3; Committee Letter II at 2–3; Committee Letter III, at 2; Heritage Letter III, at 2–3; Healthy Markets Letter III at 2; SIFMA Letter III at 3–4; and Petitioner Letter V, at 4–5. Some commenters pointed to the Commission's recent proposed rule change to amend Regulation NMS to rescind a provision that allows a proposed amendment to a national market system plan (''NMS plan'') that establishes or changes a fee or other charge to become effective upon filing, and argued that the concerns voiced by the Commission in that proposal are applicable to FINRA's current proposal. *See* Petitioner Letter IV, at 8; Chamber Letter III at 2; Committee Letter II at 2–3 (citing to Commission, Proposed Rule, ''Rescission of Effective-Upon Filing Procedure for NMS Plan Fee Amendments,'' 84 FR 54794 (Oct. 11, 2019) (''Proposed Regulation NMS Fee Amendment'')). *See also* Petitioner Statement, at 17–19.

[255] *See* Petition for Review, at 16; Petitioner Statement, at 18.

[256] *See* Petitioner Statement, at 17; Petitioner Letter V, at 4.

[257] *See* Petitioner Letter IV, at 6–9; Chamber Letter III at 2–3; Letter from John Thornton, Co-Chair, et al., Committee on Capital Markets Regulation, dated October 22, 2019 (''Committee Letter II''), at 2–3; Committee Letter III, at 2; Heritage Letter III, at 2–3; Healthy Markets Letter III, at 2; SIFMA Letter III, at 3–4; Petitioner Letter V, at 4–5; Petitioner Statement, at 34–36.

[258] *See* Petitioner Statement, at 35.

[259] *See* Petitioner Statement, at 14, 36.

[260] *See id.* Petitioner also noted that FINRA's own representative acknowledged that FINRA's current TRACE system could not support a new data service and instead FINRA would need to build new reporting, validation and distribution infrastructure. *See id.,* at 5–6 (citing to statements by Ola Persson, FINRA, FIMSAC Transcript, *supra* note 36, (''Speaking for FINRA, not the effort on behalf of the underwriters, but speaking for FINRA, we would have some work to do. The technology today does not lend itself very well to this. We would need to create the ability for underwriters to come in, give us partial information and have the ability to edit their own records, et cetera. Today, that is a . . . bit of a one-way street. . . . We would also need to create a separate distribution channel for this. . . .'').

[261] *See id.* at 2, 12. *See also* Letter from Hal. S. Scott, President, Committee on Capital Markets Regulation, dated March 16, 2020 (''Committee Letter III''), at 2 (''[B]ecause the [proposal] does not specify its proposed fees and underlying cost, the SEC cannot conduct the informed cost-benefit analysis necessary for approval . . .''); Heritage Letter V, at 2 (stating that FINRA should be required to demonstrate ''that the benefits to information purchasers would materially outweigh the unrecompensed costs imposed on underwriters. . . .'').

[262] *See* Petition for Review, at 12–13; Petitioner Statement, at 11–13.

[263] *See* Petition for Review, at 13; Petitioner Statement, at 13.

[264] *See* Petitioner Statement, at 11. This commenter further argued that the proposal cannot satisfy the requirements of Section 15(A)((b)(5) of

2. FINRA Response to Comments

In response, FINRA stated that it did not withdraw the fees from the current proposal to avoid subjecting the fees to further public comment, but rather so it could further evaluate an appropriate fee structure for the data service.[265] FINRA stated that it believed that ''with additional time, it could better assess the costs it incurs to develop the data service, and also better forecast the number of expected subscribers,'' and that this information would help it to better determine the proposed fees for the data service.[266]

FINRA stated that it has committed to pricing the data service as a utility, using a cost-based formula, meaning that it will tie the subscription price of the data service to FINRA's costs and that FINRA will allow all market participants to subscribe to the data service on reasonable, disclosed terms, as required of SROs.[267] In addition, FINRA stated that it will not employ discriminatory pricing or unreasonably refuse anyone access to the data, unlike the anti-competitive practices the FIMSAC noted have been observed in the current private market.[268]

FINRA stated that any new fees would be filed with the Commission in advance of the implementation of the newly issued corporate bond new issue reference data service and would be subject to applicable Commission rule filing requirements under the Act.[269] In addition, FINRA argued that Petitioner's contentions that the proposal cannot be approved without including the proposed fees and that the Commission erred by not making an affirmative finding under Section 15A(b)(5) of the Act are is inconsistent with the plain text of the Act and longstanding Commission precedent.[270]

3. Commission Discussion and Findings

A number of commenters expressed concerns about the lack of information regarding fees for the New Issue Reference Data Service, including (a) the appropriateness of separating the fees into a separate immediately effective filing; (b) the ability of the Commission to assess the proposal's consistency with the Act without knowing either the proposed fees for the service or the potential costs to FINRA for building the service; and (c) the application of Section 15A(b)(5) to the proposal. The Commission addresses each of these issues below.

a. Fee Filings

The Commission disagrees that separating the fee proposal into a subsequent filing would allow FINRA to avoid regulatory and public scrutiny of the proposed fees.[271] FINRA cannot charge fees for the proposed data service until the Commission receives a proposed rule change that complies with the Act and Commission rules concerning proposed fee changes. All proposed rule changes, including proposed fee changes, are subject to public notice and comment and must be consistent with the Act. As required by Section 19(b)(1) of the Act, the Commission must publish notice of all proposed rule changes and must give interested persons an opportunity to comment, whether or not such proposed rule change is immediately effective or not. The instructions to Form 19b–4 state that the form ''is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change . . . and for the Commission to determine whether the proposed rule change . . . is consistent with the requirements of the Act and the rules and regulations thereunder . . . as applicable to the self- regulatory organization and in accordance with the requirements for each type of filing.'' A proposed fee filing must fully and fairly describe the operation of the applicable fee (including its effect on market participants) and do so in sufficient detail so that the public can understand the proposal sufficiently to provide meaningful comment and the Commission can determine whether the proposal is consistent with the Act. While FINRA may file its eventual fees for the New Issue Reference Data Service as immediately effective pursuant to Section 19(b)(3)(A) of the Act, the fee filing will be subject to the same notice and comment requirements as a proposed rule change that is not eligible to be filed as immediately effective. Thus, use of the immediately effective fee filing process will not allow FINRA to avoid commenter scrutiny for its proposed fees for the service.

A proposed fee filing by a national securities association such as FINRA must also address all relevant statutory requirements, including Section 15A(b)(5) of the Act which requires that ''[t]he rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls;'' Section 15A(b)(6) of the Act, which requires, in part, that the rules of an association are ''not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;'' and Section 15A(b)(9)of the Act, which requires, in part, that the rules of an association ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.'' Regardless of whether a fee proposed by FINRA is effective upon filing with the Commission, the Commission assesses whether or not the fee proposal is consistent with the Act.[272] If the Commission determines that a fee filing merits further review, the Commission may temporarily suspend it and issue an order instituting proceedings to determine whether to approve or disapprove the proposal.[273] Such a

the Act because FINRA has failed to provide any information regarding fees or an analysis of costs or ''margins.'' *See* Petitioner Statement, at 2, 13–16.

[265] *See* FINRA Statement, at 17; Response Letter, at 12, n.35. FINRA stated that it removed the fees so that it could further evaluate the appropriate fee structure in light of comments received, as well as new Commission staff guidance on SRO fee filings published after FINRA's initial proposal. *See* FINRA Statement, at 17.

[266] *See* FINRA Statement, at 17–18.

[267] *See* FINRA Statement, at 18.

[268] *See id.*

[269] *See* FINRA Statement, at 18; Response Letter, at 12.

[270] *See* FINRA Statement, at 19–21 (citing to Section 19(b)(3)(A) of the Act, Section 15(A)((b)(5) of the Act, and various immediately effective proposed rule changes filed by SROs to adopt fees).

[271] The Commission notes that SROs are required by Section 19(b) of the Act and Rule 19b–4 thereunder to file proposed rule changes with the Commission on Form 19b–4. The Act provides that a proposed rule change may not take effect unless it is approved by the Commission pursuant to Section 19(b)(2) of the Act, or it becomes immediately effective upon filing pursuant to Section 19(b)(3)(A) of the Act. Furthermore, Section 19(b)(3)(A) of the Act states ''a proposed rule change shall take effect upon filing with the Commission if designated by the self-regulatory organization as . . . establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization. . . .'' See 15 U.S.C. 78s(b)(3)(A). Rule 19b–4(f) under the Act specifies the types of proposed rule changes that may become immediately effective upon filing with the Commission, and includes those properly designated by the SROs as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization.'' *See* Rule 19b–4(f)(2) under the Act.

[272] Furthermore, in contrast to Petitioner's assertion, FINRA has the burden of demonstrating that a proposed fee is consistent with the Act and the rules and regulations thereunder, regardless of whether the proposed fee is effective upon filing with the Commission. *See* Securities and Exchange Commission Rules of Practice, Rule 700(b)(3) (17 CFR 201.700(b)(3)). *See also supra* note 256.

[273] *See* Section 19(b)(3)(C) of the Act, authorizing the Commission at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act, to summarily temporarily suspend the change in the rules of an SRO 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, and Section 19(b)(2)(B) of the Act, setting forth a notice

Continued

determination would be informed by any comments received on a fee filing. Therefore, the Commission does not believe that FINRA's use of the immediately effective fee filing process would allow FINRA to avoid regulatory scrutiny for its proposed fees for the service.

Finally, while the Commission outlined various concerns relating to effective-upon-filing fee changes for NMS plans under Rule 608(b) in the Proposed Regulation NMS Fee Amendment, we do not believe those concerns call into question our approach here. Fee filings in this context are governed by Section 19 of the Act rather than Rule 608. More importantly, as stated above, the Commission assesses whether or not any fee proposal filed under Section 19 of the Act is consistent with the Act. If the Commission determines that a fee filing pursuant to Section 19(b)(3)(A) merits further review, which may be informed by the required notice and comment process, the Commission may temporarily suspend it and issue an order instituting proceedings to determine whether to approve or disapprove the proposal.

b. Assessment of Proposal's Consistency With the Act

The Commission further disagrees that it cannot adequately assess the proposal's consistency with the Act and its economic effects without knowing the fees that FINRA will charge for the proposed reference data service or the costs to build the service. The Commission has evaluated the economic effects, including the qualitative costs and benefits, of the proposal based on the record before it and has concluded that there is a lack of broadly available and accessible new issue reference data on the first day of secondary market trading that impedes the efficiency and competition in the current marketplace, and that FINRA's proposal would address this information asymmetry to the benefit of the market and market participants.[274] The Commission's consideration of the proposal's economic effects, including the burden on underwriters, the proposal's impact on competition among market participants, including other data vendors, and its impact on efficiency and capital formation, as discussed above, is based upon the understanding that the fees assessed will be consistent with the Act and will be assessed using a cost-based formula. It is reasonable for the Commission to assume that any future fees assessed will be consistent with the Act because, as discussed above, if it believes such fees are not consistent with the Act, the Commission must suspend and disapprove them.[275] The Commission will evaluate FINRA's eventual fee application based on the requirements of the Act and assess FINRA's proposed cost-based formula. It is that fee filing that will merit a consideration of FINRA's cost to build the New Issue Reference Data Service because the costs of the system, which will be better known once the system is built, will be necessary to assess whether FINRA has proposed a fee for that service that is consistent with the Act, including Section 15A(b)(5).[276] FINRA has expressly and clearly committed that its fees will be cost-based, and it will be required to set forth why such cost-based fees meet the requirements of the Act. While commenters have raised concerns regarding FINRA's costs to build and operate the new reference data service,[277] should FINRA hypothetically build a New Issue Reference Data Service at a high cost that would be unreasonable to pass on to end-users, FINRA would not be able to make a showing that any such fees proposed to be assessed on the basis of its cost to build the service are reasonable, as required by Section 15A(b)(5) of the Act. In such a case, as discussed above, the Commission would suspend and disapprove the proposal.

c. Application of Section 15A(b)(5) to FINRA's Proposal

The Commission disagrees with one commenter's argument that the Commission is required to make a finding under Section 15A(b)(5) of the Act that the current proposal ''provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.'' The plain language of the Act necessitates that the proposal involve a due, fee or other charge in order to make such a finding concerning Section 15A(b)(5) of the Act.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Rule 431 of the Commission's Rules of Practice, that the earlier action taken by delegated authority, Exchange Act Release No. 87656 (December 4, 2019), 84 FR 67491 (December 10, 2019), is set aside and, pursuant to Section 19(b)(2) of the Act, the proposed rule change (SR–FINRA–2019–008), as modified by Amendment No. 2, hereby is approved.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–01438 Filed 1–22–21; 8:45 am]

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and hearing procedure for an order instituting proceedings.

[274] *See generally* Sections III.A and III.B; *supra* notes 31–42, 89–102 and 139–145 and accompanying text.

[275] *See supra* note 273 and accompanying text.

[276] *See supra* note 266 and accompanying text.

[277] *See supra* notes 259–261 and accompanying text.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90937; File No. SR–MIAX–2021–01]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1308, Supervision of Accounts, To Adopt Temporary Rules To Extend the Time by Which Members Must Complete Their Branch Office Inspections for the Calendar Year 2020 and To Provide Temporary Remote Inspection Relief for Their Office Inspections for Calendar Years 2020 and 2021

January 15, 2021.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 08, 2021, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 1308, Supervision of Accounts, to: (1) Remove obsolete rule text; and (2) adopt temporary rules to extend the time by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

which Members [3] must complete their branch office [4] inspections for the calendar year 2020 and to provide temporary remote inspection relief for their office inspections for calendar years 2020 and 2021.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, 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 proposes to amend Exchange Rule 1308, Supervision of Accounts, to: (1) Remove obsolete rule text; and (2) adopt temporary rules to extend the time by which Members must complete their branch office inspections for the calendar year 2020 and to provide temporary remote inspection relief for their office inspections for calendar years 2020 and 2021.

The Exchange proposes to amend Exchange Rule 1308 by removing obsolete rule text that is the first sentence prior to subparagraph (a). The first sentence of Exchange Rule 1308 currently provides as follows: ''The deadline to submit the annual supervision-related reports pursuant paragraphs (g) and (h) will be extended from June 30, 2020 to July 31, 2020.'' [5] After the July 31, 2020 extension passed, the Exchange determined not to file to amend its rules to extend it any further. Accordingly, this rule text is obsolete and no longer necessary. The purpose of this proposed change is to provide clarity to Members and market participants regarding the Exchange's rules.

In light of the operational challenges that Members are facing due to the outbreak of the coronavirus disease (''COVID–19''), the Exchange proposes to extend the time by which Members must complete their calendar year 2020 inspection obligations under Exchange Rule 1308(d) (Annual Branch Office Inspections) to March 31, 2021,[6] and to provide Members with the option to complete their calendar year 2020 and calendar year 2021 inspection obligations under Exchange Rule 1308(d) remotely, without an on-site visit to the office or location.[7]

The Exchange has observed the impact of the COVID–19 pandemic on its Members', investors, and the industry generally and recognizes that Members are experiencing operational challenges with much of their personnel working from home due to stay-at-home orders, restrictions on businesses and social activity imposed in various states, and adherence to other social distancing guidelines consistent with the recommendations of public health officials.[8] In response, like many employers across the United States, Members closed their offices to the public, transitioned their employees to telework arrangements to comply with stay-at-home orders, and implemented other restrictive measures in an effort to slow the spread of COVID–19, such as curtailing or eliminating non-essential business travel and significantly limiting or canceling in-person activities.[9]

Exchange Rules require Members to conduct branch [10] and non-branch office and location inspections pursuant to certain annual cycles. Specifically, pursuant to Exchange Rule 1308(d), each branch office that supervises one or more non-branch locations must be inspected no less often than once each calendar year, unless it qualifies for certain exemptions.[11] Every branch office, without exception, must be inspected at least once every three calendar-years. Members must maintain written reports of such inspections.[12]

As a result of the compelling health and welfare concerns stemming from the COVID–19 pandemic, Members are facing potentially significant disruptions to their normal business operations that include staff absenteeism, the increased use of remote offices or telework arrangements, travel or transportation limitations, and technology interruptions or slowdowns. Pandemic-related operational changes have made it impracticable for Members to conduct the on-site inspections pursuant to Exchange Rule 1308(d) at many or most locations for calendar year 2020 because this compliance

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] A ''branch office'' is any location where one or more associated persons of a Member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, with such exclusions pursuant to Exchange Rule 1306(c)(1)–(7). *See* Exchange Rule 1306(c).

[5] *See* Securities Exchange Act Release No. 89261 (July 8, 2020), 85 FR 42447 (July 14, 2020) (SR–MIAX–2020–24) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Extend Filing Deadlines for Certain Supervision-Related Reports). The Exchange filed this rule change amidst continued and unprecedented market uncertainty, and sought to address potential challenges that Members could face in timely meeting their obligations to submit to the Exchange annual supervision-related reports under Rule 1308(g) and (h).

[6] The proposed rule change will automatically sunset on March 31, 2021. If the Exchange seeks to provide additional temporary relief from the rule requirement identified in this proposal beyond March 31, 2021, it will submit a separate rule filing to further extend the temporary extension of time.

[7] The proposed rule change will automatically sunset on December 31, 2021. If the Exchange seeks to extend the duration of the temporary proposed rule beyond December 31, 2021, it will submit a separate rule filing to further renew the temporary relief. The Exchange notes that SEC staff has stated in guidance that inspections must include a physical, on-site review component. *See* SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011); SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or ''for cause'' inspections of those offices).

[8] *See* Centers for Disease Control and Prevention (''CDC''), International Classification of Diseases, Tenth Revision, Clinical Modification, *https://www.cdc.gov/nchs/data/icd/Announcement-New-ICD-codeforcoronavirus-3-18-2020.pdf;* WHO Director-General, Opening Remarks at the Media Briefing on COVID–19 (March 11, 2020), *https://www.who.int/dg/speeches/detail/who-director-general-s-openingremarksat-the-media-briefing-on-covid-19---11-march-2020; and* Centers for Disease Control and Prevention, How to Protect Yourself & Others (last visited November 12, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/preventgettingsick/prevention.html.*

[9] *See e.g.,* FINRA Regulatory Notice 20–16 (May 2020) (''Notice 20–16'') (describing practices implemented by small, mid-sized and large firms to transition to, and supervise in, remote work environment during the COVID–19 pandemic).

[10] The Exchange notes that notwithstanding the exclusions in subparagraphs (c)(1)–(7) of Exchange Rule 1306, any location that is responsible for supervising the activities of persons associated with a Member at one or more non-branch locations of such Member is considered to be a branch office. *See* Exchange Rule 1306(d).

[11] A Member may demonstrate to the satisfaction of the Exchange that because of proximity, special reporting or supervisory practice, other arrangements may satisfy Exchange Rule 1308(d)'s requirements for a particular branch office, or that, based upon the written policies and procedures of such Member providing for a systematic risk-based surveillance system, the Member submits a proposal to the Exchange and receives, in writing, an exemption from the requirement in Exchange 1308(d), pursuant to Exchange Rule 1308(e).

[12] *See* Exchange Rule 1308(d)(2).

function requires firm employees to travel to geographically dispersed branch and non-branch office locations. Such travel not only has been restricted by government orders,[13] but also puts the health and safety of employees at great risk of contracting and spreading COVID–19.[14] By mid-year, with many restrictive measures still in place, and in some instances additional quarantine requirements imposed on interstate travel, on-site inspections of Member offices or locations scheduled for calendar year 2020 remain pending. The acute health and safety concerns related to COVID–19 persist, with the number of confirmed cases of COVID–19 in the U.S. continuing to rise through the fall of 2020.[15] While Members have continued to supervise all offices and locations by, among other things, implementing remote supervisory practices through novel uses of technology as well as existing methods of supervision (*e.g.,* supervisory checklists, surveillance tools, incident trackers, email review, and trade exception reports),[16] they are still experiencing logistical challenges related to conducting the onsite portion of their inspections due to continuing business and governmental restrictions and public health concerns.[17] As a result, the Exchange understands that Members have not yet been able to conduct on-site inspections scheduled for calendar year 2020, and, with no certainty as to when pandemic-related health concerns will subside and restrictions recently re-implemented in light of the resurgence of cases during the fall of 2020,[18] Members may have a considerable backlog of 2020 inspections that may have been difficult, if not impossible, to overcome on or before calendar year 2020 ended. Additionally, the Exchange recognizes that planning on-site inspections for calendar year 2021 for Member branch and non-branch offices and locations in the current environment may be impacted as well. In light of pandemic-related developments and the approaching end of calendar year 2020, the Exchange believes it is appropriate to provide tailored temporary relief for Members to meet their inspection obligations under Exchange Rule 1308(d) for calendar years 2020 and 2021.

Specifically, the Exchange proposes to adopt temporary Rule 1308(d)(4), to provide that each Member obligated to complete an annual branch office inspection pursuant to Exchange Rule 1308(d) in calendar year 2020 will be deemed to have satisfied such obligation if the applicable inspection is completed on or before March 31, 2021. The Exchange believes that this proposed temporary extension of time is tailored to address the needs and constraints on a Member's operations during the COVID–19 pandemic, without significantly compromising critical investor protection, as potential risks that may arise from providing firms additional time to comply with their inspection obligations due in calendar year 2020 are mitigated by their ongoing supervisory obligations, off-site monitoring, and the temporary nature of the extension. The proposed extension will provide Members with an opportunity to better manage the operational challenges resulting from the COVID–19 pandemic and the resources needed to fulfill these supervisory obligations during the pandemic.

In addition to this, the Exchange proposes to extend temporary remote inspection relief for calendar year 2020 and 2021. In particular, the Exchange proposes to adopt temporary Exchange Rule 1308(d)(5), which provides that each Member obligated to conduct an inspection of a branch office or non-branch location in calendar year 2020 and calendar year 2021 pursuant to Exchange Rule 1308(d), as applicable, may, subject to the requirements of Rule 1308(d)(5), satisfy such obligation by conducting the applicable inspection remotely, without an on-site visit to the office or location. In accordance with Exchange Rule 1308(d)(4), inspections for calendar year 2020 must be completed on or before March 31, 2021. Inspections for calendar year 2021 must be completed on or before December 31, 2021. Notwithstanding proposed Exchange Rule 1308(d)(5), a Member remains subject to the other requirements of Exchange Rule 1308(d).

The proposed rule change also adopts written supervisory procedures for remote inspections in proposed Exchange Rule 1308(d)(5)(i), which provides that, consistent with a Member's obligations under Rule 1308(d), a Member that elects to conduct each of its calendar year 2020 or calendar year 2021 branch office inspections remotely must amend or supplement its written supervisory procedures to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations, and with applicable Exchange Rules. Reasonably designed procedures for conducting remote inspections of offices or locations should include, among other things: (i) A description of the methodology, including technologies permitted by the branch office, that may be used to conduct remote inspections; and (ii) the use of other risk-based systems employed generally by the branch office to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable Exchange Rules. The Exchange believes the proposed rule change is consistent with a Member's existing supervisory obligations to establish and maintain written supervisory procedures for branch office reviews and review of non-branch offices and locations.[19]

Proposed temporary Rule 1308(d)(5)(ii) provides that the requirement to conduct inspections of offices and locations is one part of a Member's overall obligation to have an effective supervisory system and, therefore, a Member must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the Member conducts inspections remotely. A Member's use of a remote inspection of an office or location will be held to the same standards for review as set forth under Exchange Rule 1308(d). Where a Member's remote inspection of an office or location identifies any indicators of irregularities or misconduct (*i.e.,* ''red flags''),[20] the Member may need to

[13] *See e.g.,* City of Chicago, Emergency Travel Order (November 10, 2020) *https://www.chicago.gov/city/en/sites/covid-19/home/emergency-travelorder.html* (announcing certain travel restrictions applicable to different states based on the status of the outbreak in the states and how the data compares to the situation in Chicago); New York Department of Health, Interim Guidance for Quarantine Restrictions on Travelers Arriving in New York State Following Out of State Travel (November 3, 2020).

[14] *See* CDC, Travel During the COVID–19 Pandemic (updated October 21, 2020) *https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html* (stating, in part, ''[t]ravel increases your chance of getting and spreading COVID–19. Staying home is the best way to protect yourself and others from COVID–19'').

[15] *See* CDC, COVIDView, Key Updates for Week 44, ending October 31, 2020 (November 5, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/coviddata/pdf/covidview-11-06-2020.pdf* (stating that surveillance indicators tracking levels of SARS–CoV–2 virus circulation and associated illnesses have been increasing since September).

[16] *See supra* note 9.

[17] *See supra* note 13.

[18] *See supra* note 15.

[19] *See* Exchange Rule 1306(g)–(h).

[20] Red flags that suggest the increased risk or occurrence of violations may include, among other events: Customer complaints; an unexplained increase or change in the types of investments or trading concentration that a representative is recommending or trading; an unexpected improvement in a representative's production, lifestyle, or wealth; questionable or frequent

impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring or oversight of that office or location, including potentially a subsequent physical, on-site visit on an announced or unannounced basis when the branch office's operational difficulties associated with COVID–19 abate, nationally or locally as relevant, and the challenges a branch office is facing in light of the public health and safety concerns make such on-site visits feasible using reasonable best efforts. The temporary relief provided by proposed Exchange Rule 1308(d)(5) does not extend to a Member's inspection requirements beyond calendar year 2021 and such inspections must be conducted in compliance with Exchange Rule 1308(d)(1) through (3). The Exchange believes that the proposed rule is consistent with a Member's existing supervisory obligations to maintain policies and procedures, and a system for applying such procedures, reasonably designed to achieve compliance with, as well as assist in preventing and detecting violations of, applicable securities laws and regulations and Exchange Rules.[21]

Finally, proposed temporary Exchange Rule 1308(d)(5)(iii) provides for a documentation requirement and specifically provides that a Member must maintain and preserve a centralized record for each of calendar year 2020 and calendar year 2021 that separately identifies: (1) All offices or locations that had inspections that were conducted remotely; and (2) any offices or locations for which the Member determined to impose additional supervisory procedures or more frequent monitoring, as provided in Exchange Rule 1308(d)(5). A Member's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection. The Exchange believes that this documentation requirement would help readily distinguish the offices and locations that underwent remote inspections and their attendant supervisory procedures, and their more frequent monitoring, as applicable.

As noted above, even in the current environment, Members have an ongoing obligation to establish and maintain a system to supervise the activities of their associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules. The proposed temporary additions of Exchange Rule 1308(d)(4) and (d)(5) are not intended to lessen the supervisory obligations prescribed under the Exchange Rules. The Exchange believes that the proposed temporary rule changes, which address the needs and constraints on a Member's operations during the COVID–19 pandemic by extending the time to conduct inspections for calendar year 2020 and permitting firms to remotely inspect, subject to specified requirements described above, their offices and locations for calendar years 2020 and 2021, would provide Members a way to comply with Exchange Rule 1308(d) that would not materially diminish, and is reasonably designed to achieve, the investor protection objectives of the inspection requirements under these unique circumstances. The Exchange notes that potential risks that may arise from providing Members extended time to conduct their 2020 inspections and the option to conduct their inspections remotely are mitigated by their use of technology to meet their supervisory obligations on an ongoing basis, the unique circumstances under which they are operating, and the temporary nature of the proposed rules, which would expire on March 31, 2021 and December 31, 2021, respectively.[22]

The Exchange notes that the proposed temporary rules are substantively identical to the temporary inspection extension and remote relief rules recently filed by the Financial Industry Regulatory Authority (''FINRA'') and the Cboe Exchange, Inc. (''Cboe'').[23] The Exchange notes too that it will continue to monitor the situation and engage with Members, other financial regulators, and governmental authorities to determine whether further regulatory relief or guidance related to Exchange Rule 1308 may be appropriate.

The Exchange notes that MIAX Chapter XIII is incorporated by reference into the rulebooks of the Exchange's affiliates, MIAX PEARL, LLC (''PEARL'') and MIAX Emerald, LLC (''Emerald''). As such, the amendments to MIAX Chapter XIII proposed herein will also apply to MIAX PEARL and MIAX Emerald Chapters XIII.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[24] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[25] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[26] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to remove obsolete text in Exchange Rule 1308 is designed to prevent fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitates transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market

transfers of cash or securities between customer or third party accounts, or to or from the representative; a representative that serves as a power of attorney, trustee or in a similar capacity for a customer or has discretionary control over a customer's account(s); representative with disciplinary records; customer investments in one or a few securities or class of securities that is inconsistent with firm policies related to such investments; churning; trading that is inconsistent with customer objectives; numerous trade corrections, extensions, liquidations; or significant switching activity of mutual funds or variable products held for short time periods. *See generally* SEC Division of Market Regulation, Staff Legal Bulletin 17: Remote Office Supervision (March 19, 2004).

[21] *See generally* Exchange Rule 1308(g)(5)(i).

[22] *See supra* notes 6 and 7.

[23] *See* FINRA Rule 3110.16; *see also* Securities and Exchange Act Release Nos. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (SR–FINRA–2020–019); 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (SR–FINRA–2020–040) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Temporary Supplementary Material .17 (Temporary Relief To Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021) Under FINRA Rule 3110 (Supervision)); 90583 (December 7, 2020), 85 FR 80207 (December 11, 2020) (SR–CBOE–2020–112) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopt Temporary Rules To Extend the Time by Which Trading Permit Holders must Complete Their Office Inspections for the Calendar Year 2020 and To Provide Temporary Remote Inspection Relief for Their Office Inspections for Calendar Years 2020 and 2021).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *Id.*

system, and, in general, protects investors and the public interest. The Exchange believes that the proposed change is a non-substantive and clarifying change and will reduce potential investor or market participant confusion regarding the Exchange's rules. Further, the Exchange believes the proposed change is not material as the waiver period under this rule text expired at the end of July 2020.

In particular, the Exchange believes that, in light of the impact of COVID–19 on the performance of on-site office and location inspections pursuant to Exchange Rule 1308(d), the proposed temporary rule changes are intended to provide Members additional time to comply with their Exchange Rule 1308(d) inspection obligations due in calendar year 2020 and a temporary regulatory option to conduct inspections of offices and locations remotely for calendar years 2020 and 2021. The proposed temporary rule changes do not relieve firms from meeting their existing regulatory obligations to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules, which directly serve investor protection. In a time when faced with unique challenges resulting from the COVID–19 pandemic, the Exchange believes that the proposed temporary rule changes provide appropriately tailored relief that will afford Members the ability to observe the recommendations of public health officials to provide for the health and safety of their personnel, while continuing to serve and promote the protection of 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.

The Exchange does not believe the proposed rule change to delete obsolete text will impose any burden on intra-market and inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is not intended to address competitive issues but rather are corrective, non-substantive changes that are concerned solely with the removal of rule text that is no longer effective.

The Exchange does not believe the proposed temporary rule changes to Exchange Rule 1308(d) will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the Act, because the extension for inspections and the remote inspection relief will apply equally to all Members required to conduct office and location inspections in calendar year 2020 and 2021. The Exchange further does not believe that the proposed temporary rule changes will impose any burden on inter-market competition because it relates only to the extension of time for 2020 inspections and the manner in which inspections for 2020 and 2021 may be conducted. Additionally, and as stated above, FINRA and Cboe have recently submitted filings to adopt substantively identical temporary inspection relief rules for their members and trading permit holders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [27] and Rule 19b–4(f)(6) [28] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2021–01 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MIAX–2021–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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–MIAX–2021–01 and should be submitted on or before February 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01420 Filed 1–22–21; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[29] 17 CFR 200.30–3(a)(12).

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Utah Inland Port Authority (WB21–07—1/13/21) for permission to use select data from the Board's 2019 Masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB21–07.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Eden Besera,

Clearance Clerk.

[FR Doc. 2021–01533 Filed 1–22–21; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0007]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on January 8, 2021, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2021–0007.

Applicant: Norfolk Southern Corporation, Tommy A. Phillips, Senior Director—C&S Engineering, 1200 Peachtree Street NE, Atlanta, GA 30309

Specifically, NS requests permission to discontinue an automatic block signal (ABS) system on the W line, milepost (MP) W54.8, Inman, to MP W65.6, Spartanburg, on the Coastal Division. This includes 5 automatic signals. The main track between MP W54.8 and MP W65.6 will be converted to NS Rule 171 operation.

NS states the reason for the proposed discontinuance is that operations no longer require ABS.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 11, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–01422 Filed 1–22–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0009]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on January 7, 2021, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2021–0009.

Applicant: Norfolk Southern Corporation, Tommy A. Phillips, Senior Director—C&S Engineering, 1200 Peachtree Street NE, Atlanta, GA 30309

Specifically, NS requests permission to discontinue a traffic control system (TCS) on the T and TC lines, milepost (MP) 0.0T to MP 40.0T and MP 40.0TC to MP 87.0TC, from Andover to Bulls Gap on the Blue Ridge Division. This includes control points (CP) at Big Stone, Jasper, Tito, Glenita, Watkins, Boone, Smith, Yuma, Click, Lamb, Church Hill, Surgoinsville, Hawkins, Burem, Hogan, McCloud, Summit, Moore, Ward, Haun, and 18 automatic signal locations. The main track between MP 0.0T and MP 40.0T and MP 40.0TC and MP 87.0TC will be converted to NS Rule 171 operation. Two operable approach signals will be installed at MP 43.8TC and MP 48.3TC. The signaled sidings within the application area will be made non-controlled, other than main track.

NS states the reason for the proposed discontinuance is that operations no longer require TCS.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be

submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 11, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–01425 Filed 1–22–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0002]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on January 5, 2021, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2021–0002.

Applicant: Norfolk Southern Corporation, Tommy A. Phillips, Senior Director—C&S Engineering, 1200 Peachtree Street NE, Atlanta, GA 30309

Specifically, NS requests permission to discontinue a traffic control system (TCS) on the NA West End line, milepost (MP) 801, Birmingham, Alabama, to MP 840 and MP NA 95, control point (CP) Parish, to MP NA 5, CP Lee, on the Alabama Division. This includes CPs at Brookside, Blossburg, Locust, Bryan, Standard, Parish, Gamble, Burton, Nauvoo, Ash, Lynn, Bankhead, Yankee, Delmar, Haleyville, Philco, Franklin, Hyde, and Littleville, and 38 automatic signals. The main track from MP NA 801 to MP 840 and MP NA5 to MP NA95 will be converted to NS Rule 171 operation. All signaled sidings within the application limits will be made non-controlled, other than main track.

NS states the reason for the proposed discontinuance is that operations no longer require TCS.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 11, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–01424 Filed 1–22–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0004]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on January 6, 2021, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2021–0004.

Applicant: Norfolk Southern Corporation, Tommy A. Phillips, Senior Director—C&S Engineering, 1200 Peachtree Street NE, Atlanta, GA 30309

Specifically, NS requests permission to discontinue a traffic control system (TCS) on the S line, from milepost (MP) S146.0, control point (CP) Craggy, at Murphy Junction, to MP S228, CP New Line, at Morristown, on the Gulf Division. This includes CPs at Craggy, Volga, Ivy, Nocona, Walnut, Hot Springs, French, Del Rio, Big Creek, Bridgeport, Huff, Leadvale, Lilac, and Douglas, and 20 automatic signals. The main track between S146 and S228 will be converted to NS Rule 171 operation. An automatic signal at MP S226.5 will be converted to an operable approach signal. The signaled sidings within the application limits will be made non-controlled, other than main track.

NS states the reason for the proposed discontinuance is that operations no longer require TCS.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 11, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–01423 Filed 1–22–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0003]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on January 5, 2021, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2021–0003.

Applicant: Norfolk Southern Corporation, Tommy A. Phillips, Senior Director—C&S Engineering, 1200 Peachtree Street NE, Atlanta, GA 30309

Specifically, NS requests permission to discontinue an automatic block signal (ABS) and traffic control system (TCS) on the S line from milepost (MP) S25.7, Statesville, North Carolina, to MP S145.0, control point (CP) Craggy, on the Coastal Division. This includes CPs at Biltmore, Mitchell, Russell, and Murphy Junction slide fences, and 52 automatic signals. The main track between S25.7 and S145.0 will be converted to NS Rule 171 operation. An automatic signal at MP S26.2 will be converted to an operable approach signal. The signaled sidings within the application limits will be made non-controlled, other than main track.

NS states the reason for the proposed discontinuance is that operations no longer require ABS or TCS.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 11, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–01421 Filed 1–22–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0093]

Ford Motor Company; Denial of Petition for Inconsequentiality

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition.

SUMMARY: On July 10, 2017, Takata Corporation (''Takata'') filed a defect information report (''DIR'') in which it determined that a safety-related defect

exists in phase-stabilized ammonium nitrate (''PSAN'') driver-side air bag inflators that it manufactured with a calcium sulfate desiccant and supplied to Ford Motor Company (''Ford''), Mazda North American Operations (''Mazda''), and Nissan North America Inc. (''Nissan'') for use in certain vehicles. Ford petitioned the Agency for a decision that the equipment defect determined to exist by Takata is inconsequential as it relates to motor vehicle safety in the Ford vehicles affected by Takata's DIR, and that Ford should therefore be relieved of its notification and remedy obligations under the National Traffic and Motor Vehicle Safety Act of 1966 and its applicable regulations. After reviewing the petition, NHTSA has concluded that Ford has not met its burden of establishing that the defect is inconsequential to motor vehicle safety, and denies the petition.

ADDRESSES: For further information about this decision, contact Stephen Hench, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, W41–229, Washington, DC 20590, (Tel. 202.366.2262).

For general information about NHTSA's investigation into Takata air bag inflator ruptures and the related recalls, visit *https://www.nhtsa.gov/takata.*

SUPPLEMENTARY INFORMATION:

I. Background

The Takata air bag inflator recalls (''Takata recalls'') are the largest and most complex vehicle recalls in U.S. history. These recalls currently involve 19 vehicle manufacturers and approximately 67 million Takata air bag inflators in tens of millions of vehicles in the United States alone. The recalls are due to a design defect, whereby the propellant used in Takata's air bag inflators degrades after long-term exposure to high humidity and temperature cycling. During air bag deployment, this propellant degradation can cause the inflator to over-pressurize, causing sharp metal fragments (like shrapnel) to penetrate the air bag and enter the vehicle compartment. To date, these rupturing Takata inflators have resulted in the deaths of 18 people across the United States [1] and over 400 alleged injuries, including lacerations and other serious consequences to occupants' face, neck, and chest areas.

In May 2015, NHTSA issued, and Takata agreed to, a Consent Order,[2] and Takata filed four defect information reports (''DIRs'') [3] for inflators installed in vehicles manufactured by twelve [4] vehicle manufacturers. Recognizing that these unprecedented recalls would involve many challenges for vehicle manufacturers and consumers, NHTSA began an administrative proceeding in June 2015 providing public notice and seeking comment (Docket Number NHTSA–2015–0055). This effort culminated in NHTSA's establishment of a Coordinated Remedy Program (''Coordinated Remedy'') in November 2015.[5] The Coordinated Remedy prioritizes and phases the various Takata recalls not only to accelerate the repairs, but also—given the large number of affected vehicles—to ensure that repair parts are available to fix the highest-risk vehicles first.[6]

Under the Coordinated Remedy, vehicles are prioritized for repair parts based on various factors relevant to the safety risk—primarily on vehicle model year (MY), as a proxy for inflator age, and geographic region. In the early stages of the Takata inflator recalls, affected vehicles were categorized as belonging to one of two regions: The High Absolute Humidity (''HAH'') region (largely inclusive of Gulf Coast states and tropical island states and territories), or the non-HAH region (inclusive of the remaining states and the District of Columbia). On May 4, 2016, NHTSA issued, and Takata agreed to, an amendment to the November 3, 2015 Consent Order (''ACO''), wherein these geographic regions were refined based on improved understanding of the risk, and were then categorized as Zones A, B, and C. Zone A encompasses the higher risk HAH region as well as certain other states,[7] Zone B includes states with more moderate climates (*i.e.,* lower heat and humidity than Zone A),[8] and Zone C includes the cooler-temperature States largely located in the northern part of the country.[9]

While the Takata recalls to date have been limited almost entirely to Takata PSAN inflators that do not contain a desiccant (a drying agent)—*i.e.,* ''non-desiccated'' inflators—under a November 3, 2015 Consent Order issued by NHTSA and agreed to by Takata, Takata is required to test its PSAN inflators that do contain a desiccant—*i.e.,* ''desiccated'' inflators—in cooperation with vehicle manufacturers ''to determine the service life and safety of such inflators and to determine whether, and to what extent, these inflator types suffer from a defect condition, regardless of whether it is the same or similar to the conditions at issue'' in the DIRs Takata had filed for its non-desiccated PSAN inflators.[10]

In February 2016, NHTSA requested Ford's assistance in evaluating Takata calcium-sulfate desiccated PSDI–5 driver-side air bag inflators, to which Ford agreed. In June 2016, Ford and Takata began a field-recovery program to evaluate Takata calcium-sulfate desiccated PSDI–5 driver-side air bag inflators that were original equipment in

[1] Globally, including the United States, the deaths of at least 30 people are attributable to these rupturing Takata inflators.

[2] The May 2015 Consent Order is available at: *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/consent-order-takata-05182015_0.pdf.*

[3] Recall Nos. 15E–040, 15E–041, 15E–042, and 15E–043.

[4] The twelve vehicle manufacturers affected by the May 2015 recalls were: BMW of North America, LLC; FCA US, LLC (formerly Chrysler); Daimler Trucks North America, LLC; Daimler Vans USA, LLC; Ford Motor Company; General Motors, LLC; American Honda Motor Company; Mazda North American Operations; Mitsubishi Motors North America, Inc.; Nissan North America, Inc.; Subaru of America, Inc.; and Toyota Motor Engineering and Manufacturing.

[5] *See* Notice of Coordinated Remedy Program Proceeding for the Replacement of Certain Takata Air Bag Inflators, 80 FR 32197 (June 5, 2015).

The Coordinated Remedy Order, which established the Coordinated Remedy, is available at: *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/nhtsa-coordinatedremedyorder-takata.pdf.* The Third Amendment to the Coordinated Remedy Order incorporated additional vehicle manufacturers, that were not affected by the recalls at the time that NHTSA issued the CRO into the Coordinated Remedy, and is available at: *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/final_public_-_third_amendment_to_the_coordinated_remedy_order_with_annex_a-corrected_12.16.16.pdf.* The additional affected vehicle manufacturers are: Ferrari North America, Inc.; Jaguar Land Rover North America, LLC; McLaren Automotive, Ltd.; Mercedes-Benz US, LCC; Tesla Motors, Inc.; Volkswagen Group of America, Inc.; and, per Memorandum of Understanding dated September 16, 2016, Karma Automotive on behalf of certain Fisker vehicles.

[6] *See* Coordinated Remedy Order at 15–18, Annex A; Third Amendment to the Coordinated Remedy Order at 14–17. These documents, among other documents related to the Takata recalls discussed herein, are available on NHTSA's website at *http://www.nhtsa.gov/takata.*

[7] Zone A comprises the following U.S. states and jurisdictions: Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands (Saipan), and the U.S. Virgin Islands. Amendment to November 3, 2015 Consent Order at ¶ 7.a.

[8] Zone B comprises the following U.S. states and jurisdictions: Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia. Amendment to November 3, 2015 Consent Order at ¶ 7.b.

[9] Zone C comprises the following U.S. states and jurisdictions: Alaska, Colorado, Connecticut, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. Amendment to November 3, 2015 Consent Order at ¶ 7.c.

[10] Consent Order ¶ 28.

MY 2007–2008 Ford Ranger vehicles in Florida, Michigan, and Arizona.[11] Nissan also initiated a similar field-recovery program for its Versa vehicles in March 2016.[12] By January 2017, a very limited number of samples from Ford had been recovered and tested.[13] In March 2017, Takata and Ford met to review the field data collected from the inflators returned by Ford and Nissan.[14] Between March and June 2017, additional Ford inflators were subjected to live dissection, which included chemical and dimensional propellant analyses, as well as ballistic testing.[15] Also in June, Takata reviewed with Ford and NHTSA field-return data from Ford inflators.[16] Ford then met with NHTSA on July 6, 2017 to discuss the data collected to date, as well as an expansion plan for evaluating Takata calcium-sulfate desiccated PSDI–5 driver-side air bag inflators.

Takata analyzed 423 such inflators from the Ford program—as well as 895 such inflators from the Nissan program.[17] After a review of field-return data, on July 10, 2017, Takata, determining that a safety-related defect exists, filed a DIR for calcium-sulfate desiccated PSDI–5 driver-side air bag inflators that were produced from January 1, 2005 to December 31, 2012 and installed as original equipment on certain motor vehicles manufactured by Ford (the ''covered Ford inflators''),[18] as well as calcium-sulfate desiccated PSDI–5 driver-side air bag inflators for those same years of production installed as original equipment on motor vehicles manufactured by Nissan (the ''covered Nissan inflators'') and Mazda (the ''covered Mazda inflators'') (collectively, the ''covered inflators'').[19] As described further below, the propellant tablets in these inflators may experience density reduction over time, which could result in the inflator rupturing, at which point ''metal fragments could pass through the air bag cushion material, which may result in injury or death to vehicle occupants.'' [20]

Takata's DIR filing triggered Ford's obligation to file a DIR for its affected vehicles.[21] Ford filed a corresponding DIR, informing NHTSA that it intended to file a petition for inconsequentiality.[22] Ford then petitioned the Agency, under 49 U.S.C. 30118(d), 30120(h), and 49 CFR part 556, for a decision that, because Takata's analysis of the covered Ford inflators does not show propellant tablet-density degradation, or increased inflation pressure, and certain inflator design differences exist between the covered Ford inflators and the covered Nissan inflators, the equipment defect determined to exist by Takata is inconsequential as it relates to motor vehicle safety in the Ford vehicles affected by Takata's DIR.[23] In addition, citing its commitment to further investigation, Ford stated that it was expanding its acquisition, testing, and analysis of the covered Ford inflators, and requested that the Agency allow Ford until March 31, 2018 to complete certain testing and analysis before deciding on the Petition.[24]

In a Notice published in the **Federal Register** on November 16, 2017, NHTSA acknowledged its receipt of Ford's Petition, opened a public comment period on the Petition to expire on December 18, 2017, and denied Ford's request that the Agency allow Ford until March 31, 2018 to complete certain testing and analysis before the Agency decided on the Petition.[25] NHTSA received four comments in response to this Notice, none of which advocated granting Ford's Petition. Two individual commenters appeared to express general discontent with the state of the Takata recalls for non-desiccated PSAN inflators, and a third individual simply stated opposition to Ford's Petition without extensive substantive explanation.

The fourth commenter, the Center for Auto Safety (''CAS''), emphasized the dangers that Takata air bag inflators can pose, including the PSDI–5 inflators at issue in Ford's Petition. CAS also stated a concern that granting Ford's Petition ''would effectively serve as a decision that these inflators are exempt from future recall should additional PSAN testing prove a danger.'' [26] Specific to the substance of Ford's Petition, CAS commented that the Petition ''contains unsupported assertions as fact, and . . . no corresponding data or scientific studies confirming the safety of the PSDI–5 airbag inflators,'' and stated that ''[w]here the petition does reference the testing conducted by Takata on Ford inflators, there is little evidence provided to suggest that these inflators will continue to perform after years of exposure.'' [27] CAS concluded that, ''[a]t best, the testing performed by Takata suggests that propellant degradation and inflator chamber pressure have not *yet* developed the potential to harm occupants after ten years in service,'' and that NHTSA should deny Ford's Petition.[28]

On October 26, 2018, at an in-person meeting with NHTSA, Ford shared additional information in support of its Petition, including internal analyses, test methodologies, and results of tests performed by Ford and outside parties on behalf of Ford or at Ford's request.[29] At a subsequent virtual meeting with NHTSA on November 4, 2020, Ford shared further information in support of its Petition related to additional work done by a third party since October 2018.[30]

II. Classes of Motor Vehicles Involved

Ford's Petition involves approximately 3.04 million light

[11] *See also* Recall No. 17E–034. Later, under Paragraph 43 of the Third Amendment to the Coordinated Remedy Order (''ACRO''), NHTSA ordered each vehicle manufacturer ''with any vehicle in its fleet equipped with a desiccated PSAN Takata inflator'' (and not using or planning to use such an inflator as a final remedy) to develop a written plan describing ''plans to confirm the safety and/or service life'' of desiccated PSAN Takata inflators used in its fleet. ACRO ¶ 43. Such plans were to include coordination with Takata for parts recovery from fleet vehicles, testing, and anticipated/future plans ''to develop or expand recovery and testing protocols of the desiccated PSAN inflators.'' *Id.*

[12] Recall No. 17V–449. The specific Takata calcium-sulfate desiccated PSDI–5 driver-side air bag inflators installed in these Nissan Versa vehicles are a different variant than those installed in the Ford and Mazda vehicles. There are several differences in design between the variant installed in Nissan vehicles and the variants installed in the Ford and Mazda vehicles, which are discussed further below.

[13] Recall No. 17E–034.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *See* Recall No. 17V–449.

[18] These covered Ford inflators are identified by the prefixes ZN and ZQ.

[19] Recall No. 17E–034.

[20] *Id.*

[21] *See* 49 U.S.C. 30102(b)(1)(F); 49 CFR part 573; November 3, 2015 Coordinated Remedy Order ¶¶ 45–46. Under 49 CFR 573.5(a), a vehicle manufacturer is responsible for any safety-related defect determined to exist in any item of original equipment. *See also* 49 U.S.C. 30102(b)(1)(C).

[22] *Ford Petition for a Determination of Inconsequentiality and Request for Deferral of Determination Regarding Certain Ford Vehicles Equipped with Takata PSDI–5 Desiccated Driver Airbag Inflators* (August 16, 2017) (''Petition'') (cover letter).

[23] *Id.* at 1, 11–16. Ford also suggested differences in ''vehicle environment'' between affected Ford and Nissan vehicles as a potential explanation for inflator degradation-risk differences between the covered Ford inflators and the covered Nissan inflators. *See* Petition at 2. However, Ford did not elaborate on this suggestion elsewhere in its Petition. *See id.* at 14–16 (focusing on design differences between the covered Ford inflators and covered Nissan inflators).

[24] *Id.* at 16–20.

[25] *See* 82 FR 53561.

[26] Comments at 2.

[27] *Id.*

[28] *Id.* at 2–3 (emphasis in original).

[29] Ford submitted an accompanying slide deck, hereinafter ''October 2018 Presentation.'' This presentation is available on the public docket.

The written materials Ford submitted do not explicitly identify one of these third parties, which his hereinafter referred to as ''Third Party.''

[30] Ford submitted an accompanying slide deck, hereinafter ''November 2020 Presentation.'' This presentation is available on the public docket.

vehicles that contain the covered Ford inflators. These vehicles are: [31]

- Ford Ranger (MY 2007–2011) (build dates January 9, 2006 through December 16, 2011);
- Ford Fusion (MY 2006–2012) (build dates March 15, 2005 through July 29, 2012);
- Lincoln Zephyr/MKZ (MY 2006–2012) (build dates March 15, 2005 through July 29, 2012);
- Mercury Milan (MY 2006–2011) (build dates March 15, 2005 through June 4, 2011);
- Ford Edge (MY 2007–2010) (build dates June 15, 2006 through July 12, 2010); and
- Lincoln MKX (MY 2007–2010) (build dates June 15, 2006 through July 12, 2010).

III. Defect

The defect is present in Takata calcium-sulfate desiccated PSDI–5 driver-side air bag inflators.[32] According to its DIR, Takata produced 2.7 million of these defective inflators from January 1, 2005, to December 31, 2012.[33] These inflators are the earliest generation of Takata desiccated PSAN inflators, and were installed as original equipment in vehicles sold by Ford, Mazda, and Nissan.[34] The evidence makes clear that these inflators pose a significant safety risk. In these inflators, ''[t]he propellant tablets . . . may experience an alteration over time''—specifically, ''some of the inflators within the population analyzed show a pattern of propellant density reduction over time that is understood to predict a future risk of inflator rupture''—''which could potentially lead to over-aggressive combustion'' when the air bag in which they are installed deploys.[35] This ''could create excessive internal pressure, which could result in the body of the inflator rupturing upon deployment.'' [36] In the event of such a rupture, ''metal fragments could pass through the air bag cushion material, which may result in injury or death to vehicle occupants.'' [37] Rupture potentiality may be influenced by ''several years of exposure to persistent conditions of high absolute humidity,'' as well as other factors, including ''manufacturing variability or vehicle type.'' [38]

IV. Legal Background

The National Traffic and Motor Vehicle Safety Act (the ''Safety Act''), 49 U.S.C. Chapter 301, defines ''motor vehicle safety'' as ''the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.'' [39] Under the Safety Act, a manufacturer must notify NHTSA when it ''learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety,'' or ''decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard.'' [40] The act of filing a notification with NHTSA is the first step in a manufacturer's statutory recall obligations of notification and remedy.[41] However, Congress has recognized that, under some limited circumstances, a manufacturer may petition NHTSA for an exemption from the requirements to notify owners, purchasers, and dealers and to remedy the vehicles or equipment on the basis that the defect or noncompliance is inconsequential to motor vehicle safety.[42]

''Inconsequential'' is not defined either in the statute or in NHTSA's regulations, and so must be interpreted based on its ''ordinary, contemporary, common meaning.'' [43] The inconsequentiality provision was added to the statute in 1974, and there is no indication that the plain meaning of the term has changed since 1961—meaning definitions used today are substantially the same as those used in 1974.[44] The Cambridge Dictionary defines ''inconsequential'' to mean ''not important,'' or ''able to be ignored.'' [45] Other dictionaries similarly define the term as ''lacking importance'' [46] and ''unimportant.'' [47]

The statutory context is also relevant to the meaning of ''inconsequential.'' [48] The full text of the inconsequentiality provision is:

> On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the **Federal Register** and an opportunity for any interested person to present information, views, and arguments.[49]

As described above, the statute defines ''motor vehicle safety'' to mean ''the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents . . . and *against unreasonable risk of death or injury in an accident* . . . .'' [50] This is also consistent with the overall statutory purpose: ''to reduce traffic accidents and deaths and injuries resulting from traffic accidents.'' [51]

The statute explicitly allows a manufacturer to seek an exemption from carrying out a recall on the basis that either a defect or a noncompliance is inconsequential to motor vehicle safety.[52] However, in practice, substantially all inconsequentiality petitions have related to noncompliances, and it has been extremely rare for a manufacturer to seek an exemption in the case of a defect. This is because a manufacturer

[31] Petition at 9–10 & cover letter thereto at 1.

[32] Recall No. 17E–034.

[33] *Id.* The Agency notes that there is a discrepancy between this figure of potentially involved inflators cited in Takata's DIR, and Ford's approximate volume of affected vehicles subject to its petition (approximately 3.04 million). Recall 17E–034; Petition at 9–10 & cover letter thereto at 1. That discrepancy does not affect NHTSA's decision on Ford's Petition.

[34] Recall No. 17E–034.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] 49 U.S.C. 30102(a)(9).

[40] *Id.* 30118(c)(1). ''[A] defect in original equipment, or noncompliance of original equipment with a motor vehicle safety standard prescribed under this chapter, is deemed to be a defect or noncompliance of the motor vehicle in or on which the equipment was installed at the time of delivery to the first purchaser.'' 49 U.S.C. 30102(b)(1)(F).

[41] *Id.* 30118–20.

[42] *Id.* 30118(d), 30120(h); 49 CFR part 556.

[43] *See, e.g., Food Mktg. Institute* v. *Argus Leader Media,* 139 S. Ct. 2356, 2363 (2019) (quoting *Perrin* v. *United States,* 444 U.S. 37, 42 (1979)).

[44] *See* Public Law 93–492, Title I, § 102(a), 88 Stat. 1475 (Oct. 27, 1974); *Webster's Third New Int'l Dictionary* (principal copyright 1961) (defining ''inconsequential'' as ''inconsequent;' defining ''inconsequent'' as ''of no consequence,'' ''lacking worth, significance, or importance'').

The House Conference Report indicates that the Department of Transportation planned to define ''inconsequentiality'' through a regulation; however, it did not do so. *See* H.R. Rep. 93–1191, 1974 U.S.C.C.A.N. 6046, 6066 (July 11, 1974). Instead, NHTSA issued a procedural regulation governing the filing and disposition of petitions for inconsequentiality, but which did not address the meaning of the term ''inconsequential.'' 42 FR 7145 (Feb. 7, 1977). The procedural regulation, 49 CFR part 556, has remained largely unchanged since that time, and the changes that have been made have no effect on the meaning of inconsequentiality.

[45] *https://dictionary.cambridge.org/us/dictionary/english/inconsequential.*

[46] *https://ahdictionary.com/word/search.html?q=inconsequential.*

[47] *https://www.merriam-webster.com/dictionary/inconsequential.*

[48] *See, e.g., Taniguchi* v. *Kan Pac. Saipan, Ltd.,* 566 U.S. 560, 569–72 (2012) (considering ordinary and technical meanings, as well as statutory context, in determining meaning of a ''interpreter'' under 28 U.S.C. 1920(6)).

[49] 49 U.S.C. 30118(d), 30120(h).

[50] *Id.* 30102(a)(9) (emphasis added).

[51] *Id.* 30101.

[52] *Id.* 30118(d), 30120(h).

does not have a statutory obligation to conduct a recall for a defect unless and until it ''learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety,'' or NHTSA orders a recall by making a ''final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety.'' [53] Until that threshold determination has been made by either the manufacturer or the Agency, there is no need for a statutory exception on the basis that a defect is inconsequential to motor vehicle safety. And since a defect determination involves a finding that the defect poses an unreasonable risk to safety, asking the Agency to make a determination that a defect posing an unreasonable risk to safety is inconsequential has heretofore been almost unexplored.[54]

Given this statutory context, a manufacturer bears a heavy burden in petitioning NHTSA to determine that a defect related to motor vehicle safety (which necessarily involves an unreasonable risk of an accident, or death or injury in an accident) is nevertheless inconsequential to motor vehicle safety. In accordance with the plain meaning of ''inconsequential,'' the manufacturer must show that a risk posed by a defect is not important or is capable of being ignored. This appropriately describes the actual consequence of granting a petition as well. The manufacturer would be relieved of its statutory obligations to notify vehicle owners and to remedy the defect, and effectively to ignore the defect as unimportant from a safety perspective. Accordingly, the threshold of evidence necessary for a manufacturer to carry its burden of persuasion that a defect is inconsequential to motor vehicle safety is difficult to satisfy. This is particularly true where the defect involves a potential failure of safety-critical equipment, as is the case here.

The Agency necessarily determines whether a defect or noncompliance is inconsequential to motor vehicle safety based on the specific facts before it. The scarcity of defect-related inconsequentiality petitions over the course of the Agency's history reflects the heavy burden of persuasion, as well as the general understanding among regulated entities that the grant of such relief would be quite rare. The Agency has recognized this explicitly in the past. For example, in 2002, NHTSA stated that ''[a]lthough NHTSA's empowering statute alludes to the possibility of an inconsequentiality determination with regard to a defect, the granting of such a petition would be highly unusual.'' [55]

Of the four known occasions in which the Agency has previously considered petitions contending that a defect is inconsequential to motor vehicle safety, the Agency has granted only one of the petitions, nearly three decades ago, in a vastly different set of circumstances.[56] In that case, the defect was a typographical error in the vehicle's gross vehicle weight rating (GVWR) that had no impact on the actual ability of the vehicle to carry an appropriate load. NHTSA granted a motorcycle manufacturer's petition, finding that a defect was inconsequential to motor vehicle safety where the GVWR was erroneously described as only 60 lbs., which error was readily apparent to the motorcycle operator based upon both common sense and the fact that the 330 lbs. front axle rating and 540 lbs. rear axle rating were listed directly below the GVWR on the same label.[57] Moreover, the error did not actually impact the ability of the motorcycle to carry the weight for which it was designed.[58]

On the other hand, NHTSA denied another petition concerning a vehicle's weight label where there was a potential safety impact. NHTSA denied that petition from National Coach Corporation on the basis that the rear gross axle weight rating (RGAWR) for its buses was too low and could lead to overloading of the rear axle if the buses were fully loaded with passengers.[59] NHTSA rejected arguments that most of the buses were not used in situations where they were fully loaded with passengers and that there were no complaints.[60] NHTSA noted that its Office of Defects Investigation had conducted numerous investigations concerning overloading of suspensions that resulted in recalls, that other manufacturers had conducted recalls for similar issues in the past, and that, even if current owners were aware of the issue, subsequent owners were unlikely to be aware absent a recall.[61]

NHTSA also denied a petition asserting that a defect was inconsequential to motor vehicle safety where the defect involved premature corrosion of critical structure components (the vehicle's undercarriage), which could result in a crash or loss of vehicle control.[62] Fiat filed the petition preemptively, following NHTSA's initial decision that certain Fiat vehicles contained a safety-related defect.[63] In support of its petition, Fiat argued that no crashes or injuries resulted from components that failed due to corrosion, and that owners exercising due diligence had adequate warning of the existence of the defect.[64] NHTSA rejected those arguments and both finalized its determination that certain vehicles contained a safety-related defect (*i.e.,* ordered a recall) and found that the defect was not inconsequential to motor vehicle safety.[65] NHTSA explained that the absence of crashes or injuries was not dispositive: ''the possibility of an injury or accident can reasonably be inferred from the nature of the component involved.'' [66] NHTSA also noted that the failure mode was identical to another population of vehicles for which Fiat was carrying out a recall.[67] The Agency rejected the argument that there was adequate warning to vehicle owners, explaining that the average owner does not inspect the underbody of a car and that interior corrosion may not be visible.[68]

Most recently, the Agency denied a petition asserting that a defect in non-desiccated Takata PSAN air bag inflators

[53] *Id.* 30118(c)(1).

[54] NHTSA notes that the current petition is different in that the inflators were declared defective by the supplier of the airbag, and that Ford's defect notice was filed in response to the supplier's notice.

[55] Letter from J. Glassman, NHTSA, to V. Kroll, Adaptive Driving Alliance (Sept. 23, 2002), *https://www.nhtsa.gov/interpretations/ada3.*

[56] *See id.*

[57] *Suzuki Motor Co., Ltd.; Grant of Petition for Inconsequential Defect,* 47 FR 41458, 41459 (Sept. 20, 1982) and 48 FR 27635, 27635 (June 16, 1983).

[58] *Id.*

[59] *Nat'l Coach Corp.; Denial of Petition for Inconsequential [Defect],* 47 FR 49517, 49517 (Nov. 1, 1982). NHTSA's denial was erroneously titled ''Denial of Petition for Inconsequential Noncompliance''; the discussion actually addressed the issue as a defect. *See id.; see also Nat'l Coach Corp.; Receipt of Petition for Inconsequential Defect,* 47 FR 4190 (Jan. 28, 1982).

[60] *Id.* at 49517–18.

[61] *Id.* at 49518.

[62] *Final Determination & Order Regarding Safety Related Defects in the 1971 Fiat Model 850 and the 1970–74 Fiat Model 124 Automobiles Imported and Distributed by Fiat Motors of N. Am., Inc.; Ruling on Petition of Inconsequentiality,* 45 FR 2134, 2137, 41 (Jan. 10, 1980).

[63] *Fiat Motors of N. Am., Inc.; Receipt of Petition for Determination of Inconsequential Defect,* 44 FR 60193, 60193 (Oct. 18, 1979); *Fiat Motors Corp. of N. Am.; Receipt of Petition for Determination of Inconsequential Defect,* 44 FR 12793, 12793 (Mar. 8, 1979).

[64] *See, e.g.,* 45 FR 2134, 2141 (Jan. 10, 1980).

[65] *Final Determination & Order Regarding Safety Related Defects in the 1971 Fiat Model 850 and the 1970–74 Fiat Model 124 Automobiles Imported and Distributed by Fiat Motors of N. Am., Inc.; Ruling on Petition of Inconsequentiality,* 45 FR 2137–41 (Jan. 10, 1980). Fiat also agreed to a recall of certain of the vehicles, and NHTSA found that Fiat did not reasonably meet the statutory recall remedy requirements. *Id.* at 2134–37.

[66] *Id.* at 2139.

[67] *Id.*

[68] *Id.* at 2140.

was inconsequential to motor vehicle safety, where the defect involved the degradation of inflator propellant that could cause the inflator to over-pressurize during air bag deployment—causing metal fragments to penetrate the air bag and enter the vehicle compartment toward vehicle occupants.[69] In support of this petition and its argument that the inflators at issue were not at risk of rupture—being ''more resilient'' to rupture than other Takata PSAN inflators—General Motors made arguments and submitted evidence regarding inflator design differences and vehicle features, testing and field data analyses, inflator aging studies, predictive modeling, risk assessments, and potential risk created by conducting repairs.[70] The Agency rejected these arguments and, among other things, observed the severe nature of the safety risk and that the defect could not be discerned even by a diligent vehicle owner.[71] The Agency also specifically noted the heavy burden on General Motors to demonstrate inconsequentiality, stating that ''[t]he threshold of evidence necessary to prove the inconsequentiality of a defect such as this one—involving the potential performance failure of safety-critical equipment—is very difficult to overcome.'' [72]

Agency practice over several decades therefore shows that inconsequentiality petitions are rarely filed in the defect context, and virtually never granted. Nonetheless, in light of the importance of the issues here, and the fact that Ford's defect notification was filed in response to the notification provided by Ford's supplier, the Agency also considered the potential usefulness of the Agency's precedent on noncompliance. The same legal standard—''inconsequential to motor vehicle safety''—applies to both defects and noncompliances.[73]

In the noncompliance context, in some instances, NHTSA has determined that a manufacturer met its burden of demonstrating that a noncompliance was inconsequential to safety. For example, labels intended to provide safety advice to an occupant that may have a misspelled word, or that may be printed in the wrong format or the wrong type size, have been deemed inconsequential where they should not cause any misunderstanding, especially where other sources of correct information are available.[74] These decisions are similar in nature to the lone instance where NHTSA granted a petition for an inconsequential defect, as discussed above.

However, the burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[75] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[76] NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety.[77] ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [78] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [79]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.[80] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are actually likely to exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.[81] These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

V. Information Before the Agency

Ford advances several arguments in support of its Petition. In sum, Ford asserts that there is a difference in expected performance between desiccated and non-desiccated Takata PSAN inflators; that there are design differences between its covered inflators and another variant of the same type; that although there are signs of aging in field returns, there is no indication of propellant degradation that could lead to rupture and no imminent safety risk; and that no ruptures of the covered inflators are expected to occur for at least over twenty-six years of cumulative exposure in the worst-case environment, for the worst-case vehicle configuration, and worst-case customer usage. Ford supports these arguments with its own analyses, results of inflator testing and analyses conducted by three outside entities, and predictive modeling.

[69] *Gen. Motors LLC, Denial of Consolidated Petition for Decision of Inconsequential Defect,* 85 FR 76159 (Nov. 27, 2020).

[70] *Id.* at 76161–164, 76167.

[71] *Id.* at 76173.

[72] *Id.*

[73] 49 U.S.C. 30118(d), 30120(h).

[74] *See, e.g., Gen. Motors, LLC.; cf. Grant of Petition for Decision of Inconsequential Noncompliance,* 81 FR 92963 (Dec. 20, 2016). By contrast, in *Michelin,* we reached the opposite conclusion under different facts. There, the defect was a failure to mark the maximum load and corresponding inflation pressure in both Metric and English units on the sidewall of the tires. *Michelin N. America, Inc.; Denial of Petition for Decision of Inconsequential Noncompliance,* 82 FR 41678 (Sept. 1, 2017).

[75] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[76] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[77] *See Combi USA Inc., Denial of Petition for Decision of Inconsequential Noncompliance,* 78 FR 71028, 71030 (Nov. 27, 2013).

[78] *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[79] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[80] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[81] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

A. Ford's Statistical Analysis of MEAF Data

Ford undertook its own statistical analysis of data in the Master Engineering Analysis File (''MEAF''),[82] which Ford contends ''shows a clear difference in expected field performance between desiccated and non-desiccated inflators,'' and ''suggests that the factors causing degradation in the non-desiccated population of inflators are not currently affecting'' the covered Ford inflators.[83] Four charts underpin Ford's assertions.

The first chart is of box plots of primary-chamber pressures of covered Ford inflators by age, which Ford asserts shows there is ''[n]o significant trend of primary pressure increase with inflator age.'' [84] The second chart Ford provides is a lognormal histogram illustrating the frequency of maximum values of primary-chamber pressure of covered Ford inflators, which Ford asserts shows that the probability of a covered Ford inflator exceeding a 92.37 MPa ''threshold'' [85] is estimated as less than 1×10^{-15}.[86] Ford's third chart illustrates predicted primary-chamber pressure for covered Ford inflators with probability curves for three module ages—15, 20, and 30 years old, which Ford contends shows that the probability of a module with thirty years in service exceeding a 92.37 MPa threshold is 6.56×10^{-6}.[87] And a fourth chart consists of probability plots (log normalized, 95% confidence) comparing primary-chamber pressure maximum values between Ford modules with desiccated Takata PSAN inflators and Ford modules with non-desiccated Takata PSAN inflators.[88] Ford states this shows that the probability of exceeding a 92.37 MPa threshold for desiccated parts ''is several orders of magnitude lower than that of non-desiccated parts.'' [89]

B. Takata's Live Dissections and Ballistic Testing

According to Ford, Takata analyzed 1,992 calcium-sulfate desiccated PSDI–5 driver-side air bag inflators returned from the field from Ford vehicles, which included 1,008 inflators from Ford Ranger vehicles [90] and 984 from Fusion/Edge vehicles.[91] Analysis involved both live dissections and ballistic testing, with 1,257 inflators subject to ballistic testing, and 735 inflators subject to live dissection.[92] Ford concludes from the results that while ''no indication of degradation that could lead to a rupture and no imminent risk to safety has been identified,'' Takata's analysis did ''identif[y] signs of aging'' in the inflators.[93]

Ford did not much further explain the nature or results of this ballistic testing and live dissection in either its October 2018 or November 2020 Presentations. Ford does, however, further describe such analyses with respect to the approximately 423 inflators from Ford Rangers that Takata had analyzed at that point.[94]

Ford asserts that about 360 live dissections of the Ford Ranger inflators demonstrated ''consistent inflator output performance''—specifically, that measurements of ignition-tablet discoloration, ''generate'' density,[95] and moisture content of certain inflator constituents did not indicate a reduction-in-density trend.[96] Ford describes in its Petition that during visual inspection of the covered Ford inflators, ''Takata observed slight discoloration of the propellant tablets in the primary and secondary chambers,'' but that such discoloration ''is not an indicant by itself that the propellant has degraded''—only that the propellant had been exposed to elevated temperatures.[97] Takata also observed changes in color in the primary and secondary booster auto-ignition tablets.[98] On a scale of 1–10, with a discoloration of 10 ''indicating severe exposure'' to elevated temperatures, Ford states that ''the vast majority'' [99] of observed discoloration in inflators obtained from vehicles in certain high-heat-and-humidity states ''was within the 1–3 range after seven to eleven years of vehicle service,'' while acknowledging that ''[s]even samples were in the 5–6 range.'' [100] Accordingly, Ford asserts, the results of visual inspection ''evidence time-in-service, but not tablet density loss.'' [101] Ford's Petition also states that Takata took density measurements of propellant tablets in the primary and secondary chambers of covered Ford inflators.[102] ''[A] small number of samples [103] were measured with a density slightly below the minimum average tablet production specification,'' although Ford noted that ''a nearly equal number . . . measured densities higher than the maximum average tablet production specification.'' [104] Ford argues that such data does ''not support a conclusion that tablet density is degrading in the inflators designed for Ford after 10 years of service.'' [105]

Ford contends in its Petition that its conclusions are further supported by forty-seven ballistic deployment tests that showed no inflator exceeding the production primary-chamber pressure performance specifications.[106] The results of these tests are, according to Ford, consistent with data from newly manufactured PSDI–5 inflators in Ford vehicles.[107] Ford also emphasizes that Takata did not observe pressure vessel ruptures or pressure excursions on any

[82] For several years, Takata has inspected, tested, and analyzed inflators returned from the field. The compiled and summarized test results for hundreds of thousands of inflators are contained in the Takata MEAF, which is updated on an ongoing basis. Takata's MEAF file was available to the Agency in making its determination, and it is from this file that some of the information considered by the Agency was derived, and discussed herein.

[83] November 2020 Presentation at 11; October 2018 Presentation at 14.

[84] November 2020 Presentation at 7; October 2018 Presentation at 10.

[85] This appears to be the level at which Ford considers an abnormal deployment to be a potentiality. This 92.37 figure is used throughout Ford's materials.

[86] November 2020 Presentation at 8; October 2018 Presentation at 11.

[87] November 2020 Presentation at 9; October 2018 Presentation at 12.

[88] November 2020 Presentation at 10; October 2018 Presentation at 13.

[89] *Id.*

[90] Ford noted in its Petition that twenty of these inflators were from salvage yards ''where the conditions used to store the parts cannot be determined.'' Petition at 11.

[91] November 2020 Presentation at 12; October 2018 Presentation at 7. Takata also analyzed 895 inflators from Nissan Versa vehicles. *See* Recall No. 17V–449; Petition at 11 (''approximately 1,000'').

[92] November 2020 Presentation at 12; October 2018 Presentation at 15; *see* Petition at 14.

[93] November 2020 Presentation at 12; October 2018 Presentation at 15.

[94] Petition at 14. Ford noted that twenty of the inflators from Ford Rangers were from salvage yards ''where the conditions used to store the parts cannot be determined.'' *Id.* at 11.

When Ford filed its Petition, Takata had analyzed over 1,300 of its calcium-sulfate desiccated PSDI–5 driver-side air bag inflators: The approximately 423 inflators from Ford Rangers, and the remainder from Nissan Versa vehicles. *Id.* at 14.

[95] Ford utilizes the term ''generate'' throughout its Petition. *See, e.g.,* Petition at 3 (''generate system'') & 6 (''generate''). In the Agency's experience, ''generate'' is not among nomenclature commonly used with respect to air bag inflators—NHTSA is more familiar with the term ''gener*at*.'' In context, however, it appears that Ford is referring to an inflator's function generating gas to inflate the air bag, or the air bag inflator's propellant itself. *See id.; see also id.* at 15 (referring to ''Generate—2004,'' indicating a reference to a particular type of propellant produced by Takata).

[96] *Id.* at 11–12.

[97] *Id.* at 12.

[98] *Id.*

[99] Ford did not state the exact size of this ''vast majority.''

[100] Petition at 12.

[101] *Id.*

[102] *Id.*

[103] Ford did not state the exact size of this sample.

[104] Petition at 12–13.

[105] *Id.* at 13.

[106] *Id.* at 12–13.

[107] *Id.* at 14.

desiccated PSDI–5 inflator, and that ''[t]he maximum primary chamber pressure that Takata measured'' in covered Ford inflators was about 15 MPa lower than that measured in a covered Nissan inflator (which exhibited primary chamber pressure exceeding 60 MPa).[108]

C. ''Design Differences'' in Inflators Equipped in Ford Vehicles

In its Petition, Ford contends that ''[t]here are significant design differences'' in the covered Ford inflators when compared to the covered Nissan inflators, and that such differences may explain differences observed between the inflator variants in generate properties and during testing.[109] Ford cites its inflator variant as having ''fewer potential moisture sources'' because the inflators contain only two, foil-wrapped auto-ignition tablets (instead of three that are not foil-wrapped), contain divider disk foil tape, and utilize certain EPDM generate cushion material (instead of ceramic) that ''reduces generate movement over time, maintains generate integrity, and leads to consistent and predictable burn rates.'' [110] Ford posits that such differences may explain differences observed between the two inflator variants' generate material properties, and ballistic-testing results.[111]

D. Northrop Grumman's Analysis

Northrop Grumman (''NG'') analyzed the covered Ford inflators, results of which were presented to the Agency subsequent to Ford's filing of its Petition. According to Ford, NG's assessment of field-return parts and modeling ''identified expected signs of aging but no indication of degradation that could lead to rupture,'' and the assessment ''identified clear and significant differences between desiccated and non-desiccated inflators of similar age and design.'' [112]

Specifically, NG undertook 58 dissections, 138 tank tests, MEAF analysis, design comparisons, CT scans, and ballistic modeling. The inflators subject to dissection and tank tests included inflators from Ford Rangers (2006–2007, prefix ZN) and Fusions (2006–2008, prefix ZQ) in South Florida; Edges (2006–2008, prefix ZQ) in South Florida and Georgia; Rangers (2006–2007, prefix ZN) in Arizona, Rangers in Michigan (2006–2008, prefix ZN); and virgin inflators (prefixes ZN and ZQ).[113]

NG also completed probability-of-failure projections for the covered Ford inflators under its inflator aging model, on which Ford updated the Agency in November 2020.[114] Ford considered the results of those projections in conjunction with anticipated vehicle attrition and the probabilities of crashes with air bag deployments.[115]

1. Live Dissections

According to Ford, NG performed various assessments related to live dissections of inflators: [116]

- *Propellant health analysis.* According to Ford, the covered Ford inflators are susceptible to energetic disassembly when tablet density is at 1.64 g/cc or lower,[117] and the densities of the tablets from such returned inflators were measured ''well above'' 1.63–1.64 g/cc.
- *AI–1 analysis.* NG measured the propellant tablets for outer diameter (''OD''), weight, and color. Ford states that the OD and weight of field returns were ''similar'' to virgin inflators. Also according to Ford, ''[i]n older undesiccated inflators, the AI–1 tablet color is an indicator of age based on humidity and temperature exposure in the field, and the returned inflators retained a 0–2 color (10 the darkest),'' which was ''similar'' to virgin inflators. Ford further notes that thermogravimetric analysis ''indicated similar weight loss to virgin samples.''
- *Moisture content.* According to Ford, the propellants from the returned inflators were lower in moisture content than non-desiccated PSDI–5 inflators (prefix ZA) and desiccated PSDI–5 (prefix YT) inflators.
- *X-ray micro-computed tomography (micro-CT scan).* Ford asserts that ''[n]o definitive trend was observed with respect to void count, size, or total volume, and tablet density.'' According to Ford, ''[t]ypically, 20,000 voids were identified ranging in size from $1x10^{-5}$ to .3 cubic millimeters.''
- *Scanning electron microscope (SEM).* NG processed 2004 tablets from non-desiccated PSAN inflators (prefix ZA) through the Independent Testing Coalition's (''ITC'') aging study (1920 cycles).[118] Those had ''higher surface roughness than tablets from Ford desiccated inflators.'' Propellant in desiccated PSDI–5 inflators (prefixes GE and YT) aged at 1920 cycles, according to Ford, also had higher surface roughness than propellant in the field-returned Ford PSDI–5 inflators (prefixes ZN and ZQ)—which had surface roughness ''similar'' to propellant in virgin inflators.
- *Burn rate (closed bomb).* According to Ford, ''[n]o significant differences were observed between 2004 propellant from virgin and returned inflators,'' and ''[n]o anomalous pressure traces were observed.''
- *O-ring.* Ford states that ''[a]lthough a significant decrease in [O]-ring squeeze is observed in the 2006–8 PSDI–5D inflator igniter assembly sealing system, the remaining squeeze is deemed acceptable to prevent moisture leakage around the O-ring.'' According to Ford, older O-rings have a loss of resiliency from a decrease in the horizontal diameter that occurs with increasing age.
- *Inflator Tank Testing.* Ford states that results showed one Ford PSDI–5 inflator (ZN prefix) with a chamber pressure approximately 20% higher than the average of the other tested inflators. ''All other PSDI–5 ZN curves were grouped tightly with the virgin inflators,'' as were, according to Ford, the ZQ prefix inflators. Ford also notes that the inflator with the higher pressure was from a vehicle in Michigan, and that the pressure ''was well below any expected inflator rupture pressure.''

2. Ballistic Modeling

NG developed ballistic models ''to investigate the observed performance behavior of Ford PSDI–5 ZN and ZQ inflators and to evaluate the potential sensitivity of the inflators to certain design deviations.'' [119] Representative performance models were anchored to measured pressure data from virgin inflators.[120] ''The models simulated inflator ignition, chamber volumetric filling, burst tape rupture, ignition delay between chambers and steady state combustion.'' [121] According to Ford, the PSDI–5 design required ''significant degradation of the 2004 propellant tablets'' to obtain failure pressures.[122] Specifically, ''[a]n equivalent low press tablet density below 1.631 g/cc was

[108] *Id.*

[109] *Id.* at 14–15.

[110] *Id.* at 15–16 (providing table).

[111] *Id.* at 14–15; *see also* November 2020 Presentation at 31; October 2018 Presentation at 29–30.

[112] November 2020 Presentation at 13; October 2018 Presentation at 16.

[113] November 2020 Presentation at 14; October 2018 Presentation at 17.

[114] November 2020 Presentation at 22.

[115] *Id.*

[116] November 2020 Presentation at 15–16; October 2018 Presentation at 18–19.

[117] Although not explained, this assertion appears to be derived from NG's ballistic modeling, which found that ''[a]n equivalent low press tablet density below 1.631 g/cc was required to produce sufficient augmented burning.'' *See* November 2020 Presentation at 17; October 2018 Presentation at 20.

[118] The ITC is funded by a consortium of vehicle manufacturers.

[119] November 2020 Presentation at 17; October 2018 Presentation at 20.

[120] *Id.*

[121] *Id.*

[122] *Id.*

required to produce sufficient augmented burning.'' [123] Ford states that such degradation was not observed in the field returns of covered Ford inflators.[124]

3. MEAF Assessment

NG analyzed MEAF data up to February 2018 to determine whether covered Ford inflators had energetic deployment (''ED'') rates were dependent on platform, inflator age, climate zone, or other factors.[125] Among the ''key'' findings according to Ford: For non-desiccated PSDI–5 inflators, abnormal deployments began to occur after 10.5 years, and EDs after 11.5 years; inflator variants with calcium-sulfate desiccant experienced normal deployments up to 12.5 years (which at the time were the oldest inflators contained in the MEAF); the calcium-sulfate desiccant ''appear[ed] to be largely saturated after 8 years;'' and the covered Ford inflators contained less moisture in the 3110 booster propellant than the non-desiccated inflators.[126]

4. Probability-of-Failure Projections

In its November 2020 Presentation to the Agency, Ford cites NG's PSAN Inflator Test Program and Predictive Aging Model Final Report from October 2019 (''NG Model''),[127] first observing that this report indicates that for another OEM's PSDI–5 inflator with a calcium-sulfate desiccant (prefix YT), a T3 vehicle in Miami with the most severe aging (top 1%, hereinafter a ''1% usage'' vehicle), may reach a probability of failure of 1 in 10,000 (.01%) in less than thirty years.[128] Ford then states that under the NG model, for the Ford covered inflators prefixes ZN and ZQ, a 1% usage T3 vehicle in Miami has an expected 25.7 and 25.6 years, respectively, to a .01% probability of failure.[129] Ford further states that this is an additional two years when compared to the YT prefix version of the inflator (of another OEM).[130]

Ford then asserts that the earliest Fusion/Milan/MKZ vehicles equipped with the covered Ford inflators were built in 2005, and that if those vehicles perform as T3 vehicles, the earliest calendar year for a 1 in 10,000 probability of failure is 2031 for a 1% usage vehicle.[131] Similarly, Ford asserts that the earliest Ranger, Edge/MKX vehicles equipped with the covered Ford inflators were built in 2006, and that if those vehicles perform as T3 vehicles, the earliest calendar year for a 1 in 10,000 probability of failure is 2032 for a 1% usage vehicle.[132]

Ford builds on these assertions by stating that ''for a rupture to occur the vehicle must be in service and experience a crash resulting in airbag deployment,'' and that based on vehicle attrition and crash statistics, Ford does not project a field event at twenty-six years of service.[133] Ford provides the below data in support: [134]

Vehicle	Model year	Volume (Florida)	Probability of inflator rupture [135] at 26 years in service	Expected cumulative events at 26 years in service
Fusion	2006–2012	75,232	5.08E–07	0.038
MKZ	2006–2012			
Milan	2006–2011			
Edge	2007–2010	39,161	6.34E–07	0.025
MKX	2007–2010			
Ranger	2007–2011			

Ford therefore states that the earliest a Ford vehicle in a Miami-type environment may reach a .01% probability of failure is over a decade in the future for a 1%-usage T3 vehicle and that, in other words, ''the predictive model suggests that no inflator ruptures are expected to occur for at least 26 years of cumulative exposure in the worst case environment, worst case vehicle configuration, and worst case customer usage'' (*i.e.,* 2031 for the oldest vehicles).[136]

Ford also makes several other observations, including that: [137]

- ''[s]tudying parts prior to approximately 16–18 years in service would not identify meaningful inflator aging information'' (*i.e.,* 2023 for the oldest vehicles);
- the ITC, in coordination with NG, is conducting a surveillance program for desiccated Takata PSAN inflators, and data gathered from that program can validate the NG models;
- ''[w]ith newer inflators that have not yet shown signs of aging, there is a significant opportunity for improving the fidelity and accuracy of the model with enhanced anchoring data''; and
- there is time for a separate surveillance program for the covered Ford inflators ''well before any potential risk is projected'' after the results of NG's surveillance program that are expected in 2021.

Ford concludes that it ''believes that the current data indicates that the subject inflators do not present an unreasonable risk to safety and that it supports granting the petition.'' [138]

E. Additional Third-Party Analysis

According to Ford, an additional Third Party found that no pressure excursions were detected in the covered Ford inflators analyzed to date.[139] The Third Party also found that some field inflators experienced porosity growth greater than virgin inflators with 2004 propellant, ''but not to a level sufficient to cause pressure excursions in bomb

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] NG previously submitted this report to the Agency, which contains information regarding the safety of desiccated Takata PSAN inflators. The report is available at *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/ngis_takata_investigation_final_report_oct_2019.pdf.*

[128] November 2020 Presentation at 23. T3 refers to a ''temperature band.'' Under NG's report, there are three temperature bands—T1, T2, T3. T3 is the highest temperature band, representing vehicles with maximum inflator temperatures near or slightly above 70°C. NG Report at 18–19; *see* November Presentation at 24. The ''1% usage vehicle'' refers to a vehicle with the most severe environmental exposure based on customer usage. *See* November 2020 Presentation at 24.

[129] November 2020 Presentation at 25.

[130] *Id.*

[131] *Id.* at 26.

[132] *Id.*

[133] *Id.*

[134] *Id.*

[135] Ford notes this was ''[a]djusted for the population attrition & accident probabilities using vehicles currently registered in Florida (not all of which have always been registered in Florida).'' *Id.*

[136] *Id.* at 26–27.

[137] *Id.* at 27.

[138] *Id.*

[139] *Id.* at 18; October 2018 Presentation at 21.

testing.'' [140] In addition, ''[n]o significant increase in tablet ODs was observed for field populations'' of covered inflators.[141] These findings were derived from live dissections performed on 39 inflators and deployment tests on 65 inflators.[142] The inflators were field-return parts obtained from Florida, Michigan, and Ohio.[143]

VI. Response to Ford's Supporting Information and Analyses

Ford, through its Petition and supporting analysis, seeks to show that the covered Ford inflators are not at risk of rupture such that the defect is inconsequential to safety. First, as noted above, when taking into consideration the Agency's noncompliance precedent, an important factor is also the severity of the consequence of the defect were it to occur—*i.e.,* the safety risk to an occupant who is exposed to an inflator rupture. Ford did not provide any information to suggest that result would be any different were a covered Ford inflator to rupture in a Ford vehicle.

And second, as a general matter, at various points, Ford's Petition implicitly appears to adopt the covered Nissan inflators as a standard for inconsequentiality. However, differentiating the covered Ford inflators from the covered Nissan inflators, *e.g.,* through ballistic-testing or live-dissection results, does not directly answer the question of whether the defect in the covered Ford inflators is, on its own merits, inconsequential to motor vehicle safety. Even assuming that the covered Ford inflators compare favorably to the covered Nissan inflators, NHTSA has not made an inconsequentiality determination for the covered Nissan inflators—nor will it be doing so.[144] Ford similarly argued in subsequent materials, for example, with regard to NG's live dissections and predictive-model results, as well as Ford's statistical analysis of the MEAF, that the covered Ford inflators compared favorably to other inflator variants, and even to non-desiccated inflators. Merely demonstrating that one's own defective product compares favorably to another's defective product does not suffice for an inconsequentiality determination.

Relatedly, Ford's argument regarding ''design differences'' between the covered Ford and covered Nissan inflators appears to be more of an identification of areas for further study or potential explanation—not a standalone argument in support of an inconsequentiality determination. Ford identifies design differences ''that *may* account for the difference in material properties of the generate,'' and differences in pressures measured during ballistic testing of the inflators.[145] Ford did not persuasively connect these design differences to meaningful improved performance in generate properties and pressure differences [146] and, even if Ford had, the covered Nissan inflators are not a proxy standard for inconsequentiality.

In addition to these issues, signs of aging were observed in the covered Ford inflators; the sample sizes used for the analyses were limited; and there are shortcomings regarding various analyses that undermine their conclusions—including some information that was missing or unclear. Ford's probability-of-failure projections are also unpersuasive—and notably belied by the limited evidence available from ballistic testing and analysis on real-world field returns of the covered Ford inflators. These additional issues are discussed below.

A. Signs of Aging

Ford admits that signs of aging were observed in the covered Ford inflators. While Ford indirectly dismisses this is as a non-issue—concluding that there is no degradation ''that would signal either an imminent or developing risk to safety''—aging leads to degradation, which leads to risk of inflator rupture. Further, the 2004 propellant that is present in the covered Ford inflators degrades until, at some point, it no longer burns normally, but in an accelerated and unpredictable manner that can cause an inflator rupture. ''The purpose of the Safety Act . . . is to prevent serious injuries stemming from established defects before they occur.'' [147] And as CAS commented, ''tests demonstrating that inflators are 'OK for now' in no way ensures safety throughout the maximum useful life of these vehicles.'' [148]

B. Samples

The Agency finds shortcomings in the sample sizes utilized in the analyses. Ford's total field-return sample was, across the Takata, NG, and the additional Third Party analyses, less than 3,000 inflators for an affected population of over 3 million vehicles. Ford presented analysis from Takata of fewer than 2,000 inflators, while NG analyzed only 196, and the additional Third Party analyzed just over 100. In total, Ford cites to 1,460 ballistic tests, which is approximately .05% of the total population subject to Ford's Petition. By comparison, for example, that percentage of the population tested is much smaller than the percentage of inflators tested as of November 2019 in a mid-sized pick-up vehicle population equipped with non-desiccated PSAN inflators—1.81%—with one observed test rupture. Ford's own statistical analysis of the MEAF regarding Pc Primary Max Value frequency [149] was also based on only 1,247 inflators.[150]

C. Additional Underlying Information

Other shortcomings regarding various analyses presented here—including some information that was missing or unclear—further undermine the associated conclusions. These are identifiable in both Ford's Petition and in the subsequent Presentations to the Agency.

1. Ford's Petition

As an initial matter, Ford submitted little of the relevant underlying data, and did not fully explain the underlying methodologies and results, associated with the arguments in its 2017 Petition. More specifically, one of Ford's arguments in its 2017 Petition is that Takata's live dissections of covered Ford inflators does not show tablet-density degradation or increased inflation pressure, and therefore, Takata ''did not identify a reduction in density trend'' in

[140] *Id.*

[141] *Id.*

[142] *Id.*

[143] *Id.*

[144] Ford's comparisons might carry more evidentiary weight if, for instance, the Agency had previously granted an inconsequentiality petition from Nissan for its covered inflators. Nissan did not petition the Agency for an inconsequentiality determination for its covered inflators. *See also* 49 CFR 556.4(c) (requiring such a petition is submitted not later than thirty days after defect or noncompliance determination).

[145] Petition at 14–15 (emphasis added).

[146] Moreover, as described further below, based on recent MEAF data, one covered Ford inflator has the highest chamber pressure tested for Takata calcium-sulfate desiccated PSDI–5 inflators.

[147] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977).

[148] *See* Comments at 3.

[149] *See* November 2020 Presentation at 8.

[150] Moreover, twenty of the inflators (from Ranger vehicles) were from salvage yards, ''where the conditions used to store the parts cannot be determined.'' Petition at 11. Further highlighting the significance of this shortcoming, Ford noted in its Petition the potential importance of ''vehicle environment'' with respect to inflator-degradation risk but did not elaborate on this suggestion elsewhere in its Petition. *See id.* at 2; *id.* 14–16 (focusing on design differences between the covered Ford inflators and covered Nissan inflators). For purposes of its arguments related to the NG Model, Ford presented a worst-case scenario, where it was assumed for purposes of that scenario that the vehicles at issue would be in the T3 temperature band.

the covered Ford inflators.[151] Tablet discoloration was graded on a qualitative 1–10 scale, but to what discoloration characteristics each level of this scale corresponds is not explained. And Ford's conclusion that a ''vast majority'' of discoloration in certain inflators was within a certain low range of discoloration (with seven samples in a certain mid-range) is vague, and Ford did not provide information about the specific distribution of the results (*e.g.,* the number of inflators receiving each discoloration value or the number of inflators in each Zone).[152]

Ford also provides little information about the specific inflators tested and associated results with regard to density measurements—such as actual dimensions, mass, and densities, among measurements—instead largely relying on general descriptions the results.[153] For inflation pressure, Ford offers evidence of ballistic tests, although the breakdown of this sample with regard to vehicle model year and location, as well as how many of these inflators were obtained from salvage yards with unknown environment exposures (and the associated results), was not provided.[154]

2. Subsequent Submissions to the Agency

Ford's statistical analysis of the MEAF contains several shortcomings in the first two charts—box plots of primary-chamber pressure by age of inflator, and a lognormal histogram of maximum values illustrating the frequency of maximum values of primary-chamber pressure of covered Ford inflators. In the box plots, Ford does not specify or illustrate what a ''normal'' or ''expected'' primary-chamber pressure would be. Nor did Ford provide information showing how many inflators each age group comprises—although the lack of whiskers in the box plot for inflators aged thirteen years suggests that, at least for that age group, the sample size is small. There are also outlier pressure values observed in the nine- to twelve-year age groups, which concern the Agency. And in the histogram, Ford does not distinguish among different inflator ages—which would have highlighted any trends in primary-chamber pressure maximum values based on age.

There are also several shortcomings with the second two charts—the probability curves for module ages, and probability plots comparing primary-chamber pressure maximum values of Ford modules with desiccated and non-desiccated inflators, respectively. As to the probability curves, while details were not provided by Ford, this analysis appears to assume that degradation will proceed linearly. However, researchers that have been most closely involved in analyzing Takata inflators, including NG, all seem to agree that the degradation process is, at the very least, complex, and does not follow a linear trajectory. Instead, 2004 propellant (which is contained in the covered Ford inflators) degrades until, at some point, it no longer burns normally, but in an accelerated and unpredictable manner that can cause an inflator rupture. As to the probability plots, while a comparison between desiccated and non-desiccated inflators is somewhat informative from a broad perspective, it is too general to lend much support to Ford's Petition, and as noted above, the performance of non-desiccated Takata PSAN inflators is not a sound benchmark for whether the defect in the covered Ford inflators is inconsequential to safety.

Regarding NG's analysis, as an initial matter, over a quarter of the 196 inflators analyzed were non-aged/virgin inflators and, further, degradation would not be expected in the inflators from Michigan (from which, collectively, 55 of the inflators were obtained). Ford also acknowledges aging in inflator O-rings from this analysis. In addition, there are several particular issues with NG's live dissections worth noting. Findings regarding moisture content are of limited value, and Ford did not present important information on the referenced comparator prefix ZA and YT inflators—*e.g.,* age and the geographic region in which they were used. As to the SEM results, Ford does not explain how the concept of surface roughness relates to the long-term safety of the inflators at issue here. Similarly, regarding the additional Third Party's analysis, OD growth for the tablet grain form has not been found to be reliable indicator of propellant health, and Ford does not demonstrate otherwise.

D. Probability-of-Failure Projections

Ford's probability-of-failure projections are also unpersuasive. As previously described, these projections, submitted in support of Ford's Petition in November 2020, are based on the NG Model. While the projections are informative in various respects, NHTSA does not view the Model's outputs for the covered Ford inflators as fully squaring with the evidence available for those inflators from real-world field returns[155]—which renders what Ford provides unpersuasive for the purposes of its Petition. Even with the limited testing evidence available, ballistic testing of field returns of the covered Ford inflators includes three inflator deployments with primary-chamber pressures between 60 and 70 MPa—coming from two ZQ inflators with a field age between 12 and 13 years (one of which exhibited a pressure of 68 MPa), and one ZN inflator with a field age between 10 and 11 years.[156] In the Agency's experience, such primary-chamber pressure results are indicative of propellant degradation and potential future rupture risk. The nature of these results, in addition to causing concern, undercuts one of Ford's notable arguments in its Petition: That ''[t]he maximum primary chamber pressure that Takata measured'' in covered Ford inflators was about 15 MPa lower than that measured in a covered Nissan inflator (which exhibited primary chamber pressure exceeding 60 MPa). Indeed, at least three covered Ford inflators have now exceeded 60 MPa in ballistic testing (one ZN, two ZQ), and according to recent MEAF data, one of these inflators (of the ZQ variant) has the highest chamber pressure tested for Takata calcium-sulfate desiccated PSDI–5 inflators.

Data from the MEAF also may suggest the beginning stages of notable density changes in propellant tablets in the covered Ford inflators with increasing field age. Recent results from primary tablets in inflators with field ages between 12 and 14 years show four inflators with density measurements near (or below) 1.68 g/cc; according to Ford, 1.64 g/cc is the point at which the PSDI–5 inflators with 2004 tablets are susceptible to energetic disassembly.[157]

[151] *Id.* at 11.

[152] *See id.* at 12.

[153] *See id.* at 12–13 (''[A] small number of samples were measured with a density slightly below the minimum average tablet production specification, while a nearly equal number of samples measured densities higher than the maximum. . . .'').

[154] *See id.* at 13.

[155] While it may be possible to age an inflator artificially in a manner that replicates aging characteristics in the field (and then test those inflators), Ford did not attempt to do this for the covered Ford inflators.

[156] Also notable is that all three results are over three standard deviations above even the average field-return results for ZN and ZQ inflators collectively (for which the Agency would expect a higher average than virgin inflators).

Ford also noted a ZN inflator tested by NG with a chamber pressure approximately 20% higher than the average of the other inflators in tank testing. The specific measurement (and measurements of other NG tests) does not appear to have been provided to the Agency.

[157] These results regard recently tested ZQ inflators with greater field ages than previously tested ZN inflators, although it should also be noted

Continued

Similarly, there are a number of field returns measured with secondary-chamber tablet densities under 1.66 g/cc (mostly ZN, although one ZQ inflator), including ZN inflators under 1.64 g/cc—one of which was measured as low as 1.62 g/cc. This undermines the contention that the densities of the tablets from returned covered Ford inflators were measured ''well above'' 1.63–1.64 g/cc, as well as assertions regarding the results of visual inspections that it contends ''evidence time-in-service, but not tablet density loss.''

The above results from real-world field returns signal that propellant degradation in the covered Ford inflators is occurring. While the predictive model that Ford references (and its applicable results) is informative in certain respects, the specific metrics Ford cites in support cannot be sufficiently squared with the actual testing that has been completed on real-world field returns to be persuasive for Ford's Petition.[158]

Further, there are shortcomings particular to the metrics on which Ford relies regarding the Model. Notably, Ford contends that ''there are no expected field events projected at 26 years of service.'' [159] However, Ford's figures for an expected number of cumulative field events [160] were cut off at 26 years in service and limited to an analysis of vehicles in Florida—a combined volume of 114,393 vehicles, which is less than 4% of the total population of Ford vehicles at issue.[161] While such vehicles may be among the highest risk populations, unless it is assumed that there is a cumulative zero probability of inflator rupture (through 26 years in service) for every vehicle in every other State (including States other than Florida with high heat and humidity),[162] these calculations do not reflect the expected cumulative events for the entire population of 3.04 million vehicles installed with calcium-sulfate desiccated Takata inflators through 26 years in service—thereby understating the risk, as suggested by the Model, for the vehicles at issue in Ford's Petition. In other words, Ford does not provide a fleet-level assessment here—the total number of cumulative events expected to occur in the coming years for such vehicles. And in any case, Ford's metrics are undercut by the ballistic results and analysis of field-returned inflators showing elevated pressures and propellant density changes discussed above.

VII. Decision

The relief sought here is extraordinary. Ford's Petition is quite distinct from previous petitions discussed above relating to defective labels that may (or may not) mislead the user of the vehicle to create an unsafe condition.[163] Nor is the risk here comparable to a deteriorating exterior component of vehicle that—even if an average owner is unlikely to inspect the component—might (or might not) be visibly discerned.[164] Rather, similar to the defect at issue in NHTSA's recent decision on a petition regarding certain non-desiccated Takata PSAN air bag inflators installed in General Motors vehicles, the defect here poses an unsafe condition caused by the degradation of an important component of a safety device that is designed to protect vehicle occupants in crashes.[165] Instead of protecting occupants, this propellant degradation can lead to an uncontrolled explosion of the inflator and propel sharp metal fragments toward occupants in a manner that can cause serious injury and even death.[166] This unsafe condition—hidden in an air bag module—is not discernible even by a diligent vehicle owner, let alone an average owner.[167]

NHTSA has been offered no persuasive reason to think that without a recall, even if current owners are aware of the defect and instant petition, subsequent owners of vehicles equipped with covered Ford inflators would be made aware of the issue.[168] This is not the type of defect for which notice alone enables an owner to avoid the safety risk. A remedy is required to address the underlying safety defect.

As discussed above, the threshold of evidence necessary to prove the inconsequentiality of a defect such as this one—involving the potential performance failure of safety-critical equipment—is very difficult to overcome.[169] Ford bears a heavy burden, and the evidence and argument Ford provides suffers from numerous, significant deficiencies, as previously described in detail. In all events, the information that Ford presents in its Petition and subsequent Presentations to the Agency is inadequate to support a grant of its Petition.

As noted above, at various points Ford's Petition appears to focus on differentiating the covered Ford inflators from the covered Nissan inflators—not directly answering the question of whether the defect in the covered Ford inflators is, on its own merits, inconsequential to motor vehicle safety. Ford similarly argued in subsequent materials that the covered

that one ZN inflator with a field age of about 10 years measured a primary-tablet density just above 1.66 g/cc—lower than any result for a ZQ inflator.

[158] *See also* Exhibit A (Report of Dr. Harold Blomquist) to *Gen. Motors LLC, Denial of Consolidated Petition for Decision of Inconsequential Defect,* 85 FR 76159 (Nov. 27, 2020) at para.272 (indicating that—in assessing a similar model with regard to a petition for inconsequentiality—apparent inconsistencies between that model's predictions and high-pressure ballistic test results of field returns—of inflators not at issue here—''suggest caution should be used'' in applying the results of that model).

[159] *See* November 2020 Presentation at 26.

[160] These figures, which appear based on the twenty-sixth year of service (the point at which, under the NG Model and according to Ford, there is a 1% probability of failure for a covered Ford inflator in a T3 vehicle with the most severe (top 1%) usage factors in Miami), were 0.038 for a population of approximately 75,000 Fusion, MKZ, and Milan vehicles, and 0.025 for a population of approximately 39,000 Edge, MKX, and Ranger vehicles. *See* November 2020 Presentation at 26.

[161] Ford did not submit evidence demonstrating that none of the vehicles subject to the Petition would be in service after 26 years—in Florida or otherwise. And while Ford adjusted relevant metrics for attrition and crash probabilities, Ford did not submit specific information about how these adjustments were made.

[162] Although 26 years is—under the NG Model and according to Ford—the point at which there is a 1% probability of failure for a covered Ford inflator in a vehicle with the most severe (top 1%) usage factors in Miami, Ford does not explain why this is an appropriate point at which to end its analysis of the expected number of cumulative field events.

[163] *See Nat'l Coach Corp.; Denial of Petition for Inconsequential [Defect],* 47 FR 49517 (Nov. 1, 1982); *Suzuki Motor Co., Ltd.; Grant of Petition for Inconsequential Defect,* 48 FR 27635 (June 16, 1983).

[164] *See Final Determination & Order Regarding Safety Related Defects in the 1971 Fiat Model 850 and the 1970–74 Fiat Model 124 Automobiles Imported and Distributed by Fiat Motors of N. Am., Inc.; Ruling on Petition of Inconsequentiality,* 45 FR 2134 (Jan. 10, 1980).

[165] *See Gen. Motors LLC, Denial of Consolidated Petition for Decision of Inconsequential Defect,* 85 FR 76159 (Nov. 27, 2020).

[166] *See id.* at 76173; *cf. Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355–01, 2013 WL 2489784 (June 12, 2013) (finding noncompliance inconsequential where ''occupant classification system will continue to operate as designed and will enable or disable the air bag as intended'').

[167] *See Gen. Motors LLC, Denial of Consolidated Petition for Decision of Inconsequential Defect,* 85 FR 76159, 76173 (Nov. 27, 2020); *Final Determination & Order Regarding Safety Related Defects in the 1971 Fiat Model 850 and the 1970–74 Fiat Model 124 Automobiles Imported and Distributed by Fiat Motors of N. Am., Inc.; Ruling on Petition of Inconsequentiality,* 45 FR 2134 (Jan. 10, 1980) (rejecting argument there was adequate warning to vehicle owners of underbody corrosion, as the average owner does not undertake an inspection of the underbody of a vehicle, and interior corrosion of the underbody may not be visible).

[168] *See Nat'l Coach Corp.; Denial of Petition for Inconsequential [Defect],* 47 FR 49517 (Nov. 1, 1982) (observing, *inter alia,* that other manufacturers had conducted recalls for similar issues in the past, and that, even if current owners were aware of the issue, subsequent owners were unlikely to be aware absent a recall).

[169] *See Gen. Motors LLC, Denial of Consolidated Petition for Decision of Inconsequential Defect,* 85 FR 76159, 76173 (Nov. 27, 2020).

Ford inflators compared favorably to another inflator variant of the same type, and even to non-desiccated inflators. These comparisons do not suffice for an inconsequentiality determination. Relatedly, Ford's argument regarding design differences does not suffice to support an inconsequentiality determination. This argument, furthermore, was not persuasively connected to meaningful improved performance in generate-properties and pressure differences (and even if it had been, the covered Nissan inflators are not an appropriate proxy standard for inconsequentiality). The sample sizes used for the analyses were also limited, and there are shortcomings regarding various analyses that undermine their conclusions—including some information was missing or unclear.

As a general matter, signs of aging were observed in the covered Ford inflators, which leads to propellant degradation, which leads to inflator rupture—and the 2004 propellant that is present in the covered Ford inflators degrades until, at some point, it no longer burns normally, but in an accelerated and unpredictable manner that can cause an inflator rupture. Perhaps most importantly, even with the limited testing evidence available, ballistic testing of field returns of the covered Ford inflators includes three inflator deployments with primary-chamber pressures between 60 and 70 MPa—coming from two ZQ inflators with a field age between 12 and 13 years (one of which exhibited a pressure of 68 MPa), and one ZN inflator with a field age between 10 and 11 years. Data from the MEAF also appears to indicate the beginning stages of density changes in propellant tablets in the covered Ford inflators with increasing field age. These results from real-world field returns signal that propellant degradation in the covered Ford inflators is occurring, and belie the probability-of-failure projections that Ford provides (which have their own additional shortcomings that lead to an understatement of the potential risk).

Given the severity of the consequence of propellant degradation in these air bag inflators—the rupture of the inflator and metal shrapnel sprayed at vehicle occupants—a finding of inconsequentiality to safety demands extraordinarily robust and persuasive evidence. What Ford presents here, while valuable and informative in certain respects, suffers from far too many shortcomings, both when the evidence is assessed individually and in its totality, to demonstrate that the defect in covered Ford inflators is not important or can otherwise be ignored as a matter of safety.

In consideration of the forgoing, NHTSA has decided Ford has not demonstrated that the defect is inconsequential to motor vehicle safety. Accordingly, Ford's Petition is hereby denied, and Ford is obligated to provide notification of, and a remedy for, the defect pursuant to 49 U.S.C. 30118 and 30120. Within 30 days of the issuance of this decision, Ford shall submit to NHTSA a proposed schedule for the notification of vehicle owners and the launch of a remedy required to fulfill those obligations.

Authority: 49 U.S.C. 30101, *et seq.,* 30118, 30120(h), 30162, 30166(b)(1), 30166(g)(1); delegation of authority at 49 CFR 1.95(a); 49 CFR parts 556, 573, 577.

Jeffrey Mark Giuseppe,

Associate Administrator for Enforcement.

[FR Doc. 2021–01540 Filed 1–22–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2020–0008]

Pipeline Safety: Request for Special Permit; El Paso Natural Gas Company, L.L.C.

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from the El Paso Natural Gas Company, L.L.C. (EPNG). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by February 24, 2021.

ADDRESSES: Comments should reference the docket number for this specific special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: 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 notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not

specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from EPNG seeking a waiver from the requirements of 49 CFR 192.611(a) and (d): Change in class location: Confirmation or revision of maximum allowable operating pressure, and § 192.619(a): Maximum allowable operating pressure: Steel or plastic pipelines. This special permit is being requested in lieu of pipe replacement or pressure reduction for one (1) special permit segment of 650 feet (0.123 miles) on the EPNG pipeline system. The proposed special permit segment is located in Ward County, Texas. The EPNG pipeline class location in the special permit segment has changed from a Class 2 to a Class 3 location. The EPNG pipeline special permit segment is a 30-inch diameter pipeline with an existing maximum allowable operating pressure of 944 pounds per square inch gauge. The installation of the special permit segment occurred in 2003.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the EPNG pipeline are available for review and public comment in Docket No. PHMSA–2020–0008. We invite interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2021–01522 Filed 1–22–21; 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 Transactions of Exempt Persons Regulations, and FinCEN Report 110, Designation of Exempt Person Report

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, the regulations permit banks to file a FinCEN Report 110, Designation of Exempt Person (''DOEP Report''), to designate eligible customers as exempt persons, such that a bank is not required to file a report with respect to any transaction in currency over $10,000 with such customers. Under the regulations, a bank, to exempt a person, must also take steps to ensure that a person meets the requirements for an exemption, document the basis for the bank's initial conclusion that a person is exempt, annually review the eligibility of certain exempt persons, document compliance with the DOEP Report requirements, and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, transactions in currency requiring a bank to file a suspicious transaction report. Although no changes are proposed to the information collection itself, this request for comments covers a future expansion of the scope of the annual hourly burden and cost estimate associated with these regulations. 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 March 26, 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–2020–0018 and the specific Office of Management and Budget (OMB) control number 1506–0012.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2020–0018 and OMB control number 1506–0012.

Please submit comments by one method only. Comments will also be taken into account in FinCEN's review of existing regulations, consistent with 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]

The requirement for financial institutions to report certain transactions in currency has been an important component of the BSA from its inception.[3] Regulations

[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. Section 6101 of the Anti-Money Laundering Act of 2020 added language further expanding the scope of the BSA but did not disturb these longstanding purposes.

[2] Treasury Order 180–01 (re-affirmed Jan. 14, 2020).

[3] Public Law 91–508 (Oct. 26, 1970), 84 Stat. 1122.

implementing this requirement have long established a one-person, one-day, one-institution aggregate currency transaction threshold of $10,000, above which every financial institution must file a Currency Transaction Report (CTR).[4] The Money Laundering Suppression Act of 1994 amended the BSA to create certain mandatory exemptions applicable to banks from the requirement for financial institutions to file CTRs, and to give the Secretary authority to create additional such exemptions.[5] Regulations implementing this exemption authority, including by requiring the collection of information on the DOEP Report, are found at 31 CFR 1020.315.

Under 31 CFR 1020.315(a), a bank is not required to file a CTR with respect to any transaction in currency between exempt persons and the bank, or between an exempt person and other banks that are affiliated with the bank.[6]

31 CFR 1020.315(b) sets out that an exempt person is: (1) A bank, to the extent of such bank's domestic operations; (2) a department or agency of the United States, of any State, or of any political subdivision of any State; (3) any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact, that exercises governmental authority on behalf of the United States, any such State, or any such political subdivision; (4) any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange, the American Exchange, or the NASDAQ Stock Market (a ''listed entity''), provided that, if the listed entity is a financial institution other than a bank, it is an exempt person only to the extent of its domestic operations; (5) any subsidiary, other than a bank, of a listed entity mentioned in the previous item (4) that is organized under the laws of the United Sates or of any State, provided that the listed entity owns at least 51 percent of the equity interest of the subsidiary, and subject to the qualification that if the subsidiary is a financial institution other than a bank, it is an exempt person only to the extent of its domestic operations; (6) any other commercial enterprise, with certain exceptions, that maintains a transaction account at the bank for at least two months, frequently engages in transactions with the bank in currency in excess of $10,000, and is incorporated or organized under the laws of, or is registered as and eligible to do business within, the United States or a State (a ''non-listed business''), but only to the extent of the non-listed business customers' domestic operations and only with respect to transactions conducted through the non-listed business customer's exemptible accounts; or (7) any other person, with certain exceptions, that maintains a transaction account at the bank for at least two months, operates a firm that frequently withdraws more than $10,000 in order to pay its U.S. employees in currency, and is incorporated or organized under the laws of, or is registered as and eligible to do business within, the United States or a State (a ''payroll customer''), but solely with respect to withdrawals for payroll purposes from existing exemptible accounts.[7]

31 CFR 1020.315(c)(1) requires a bank to designate an exempt person by filing the DOEP Report[8] within 30 calendar days after the day of the first reportable transaction in currency with that person that the bank seeks to exempt from reporting. A bank holding company or one of its bank subsidiaries may make such a designation on behalf of any or all of the bank holding company's bank subsidiaries by listing those bank subsidiaries in the DOEP Report that it files.[9] However, a bank is not required to file a DOEP Report for transfer of currency to or from (1) any of the 12 Federal Reserve Banks, (2) a bank, to the extent of such bank's domestic operations, (3) a department or agency of the United States, of any State, or of any political subdivision of any State, or (4) any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision.[10]

31 CFR 1020.315(d) requires a bank to review at least once annually the continued eligibility of an exempt person that is a (1) listed entity, (2) subsidiary of a listed entity, (3) non-listed business customer, or (4) payroll customer. As part of the annual review, a bank must also review the application to each existing account of a non-listed business or payroll customer of the monitoring system that 31 CFR 1020.315(h)(2) requires the bank to maintain (related to suspicious activity monitoring).

Under 31 CFR 1020.315(e), a bank must take steps to assure itself that an exempt person meets the definition of that term (see 31 CFR 1020.315(b), summarized above), document the basis for its conclusion, and document its compliance with the terms of the exemption, including the operating rules in 31 CFR 1020.315(e)(2)-(9). A bank must also take steps to document compliance with its suspicious activity monitoring obligations under 31 CFR 1020.315(h)(2). The steps that the bank takes under 31 CFR 1020.315(e) must be those that a reasonable and prudent bank would take and document to protect itself from fraud or loss based on misidentification of a person's status and, in the case of the suspicious activity monitoring obligations, to identify suspicious transactions.

31 CFR 1020.315(h)(1) states that the CTR exemption rules do not relieve a bank of its obligation to report any suspicious transactions pursuant to 31 CFR 1020.320, including any suspicious transactions or attempted transactions in currency associated with the accounts of an exempt person, or relieve a bank of any other reporting or recordkeeping obligation imposed under the authority of the BSA.

Under 31 CFR 1020.315(h)(2), a bank must establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, transactions in currency that would require a bank to file a suspicious activity report (SAR).

II. Paperwork Reduction Act of 1995 (PRA)[11]

Title: Transactions of Exempt Person (31 CFR 1020.315), and FinCEN Report 110—DOEP Report.

OMB Control Number: 1506–0012.

Report Number: FinCEN Report 110—DOEP Report.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the transactions of exempt person regulations and the DOEP Report.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

[4] 31 CFR 1010.311.

[5] Public Law 103–325, Title IV, Section 402 (Sep. 23, 1994), 108 Stat. 2243. These authorities are codified at 31 U.S.C. 5313(d) (mandatory exemptions) and (e) (discretionary exemptions).

[6] 31 CFR 1010.315(a). The exemption does not apply when the exempt person is acting as agent for another person who is the beneficial owner of the funds that are the subject of the transaction. 31 CFR 1010.315(f).

[7] In certain circumstances, a limited exemption from the two month transaction account holding requirement may apply to non-listed business and payroll customers pursuant to the special rule at 31 CFR 1010.315(c)(2)(ii).

[8] This is referred to in the regulations as ''FinCEN Form 110.'' FinCEN has referred to its forms as ''reports'' since moving to electronic filing.

[9] 31 CFR 1020.315(c)(1) and (e)(6).

[10] 31 CFR 1020.315(c)(2)(A) and (B).

[11] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

Type of Review:

• Renewal without change of a currently approved information collection.

• Propose for review and comment a renewal of the portion of the PRA burden that has been subject to notice and comment in the past (the ''traditional annual PRA burden'').

• Propose for review and comment a future expansion of the scope of the PRA burden (the ''supplemental annual PRA burden'').

Frequency: As required.

Estimated Number of Respondents: 11,161 banks.[12]

Estimated Number of Responses: 18,141.[13]

Estimated Recordkeeping Burden: In Part 1 of this notice, FinCEN describes the breakdown of the estimated number of financial institutions, by type. In Part 2, FinCEN proposes for review and comment a renewal of the estimate of the traditional annual PRA hourly burden, which includes a scope and methodology similar to that used in the past, with the incorporation of a more robust cost estimate. The scope and methodology used in the past was limited to filling out, filing, and maintaining a copy of the DOEP Report filed. In Part 3, FinCEN proposes for review and comment a methodology to estimate a future estimate of a supplemental annual PRA burden that includes the burden and cost to a bank related to the regulatory requirements to: (1) Determine the initial eligibility of exempt persons, document the bank's basis for its conclusion, and document compliance with, *inter alia,* the operating rules set out in 1020.315(e); (2) conduct an annual review to determine whether certain exempt persons remain eligible for the CTR exemption, and consistent with that review, to maintain a monitoring system to identify suspicious transactions associated with the accounts of non-listed business and payroll customers; and (3) establish and maintain a monitoring system reasonably designed to monitor currency transactions and report suspicious transactions pursuant to the bank's general obligation to report any suspicious transactions.[14] Finally, in Part 4, FinCEN solicits input from the public about: (1) The accuracy of the estimate of the traditional annual PRA burden; (2) the method proposed for the calculation of the future supplemental annual PRA burden; (3) the criteria, metrics, and most appropriate questions FinCEN should consider when researching the information to estimate the future traditional and supplemental annual PRA burden, according to the methodology proposed; and (4) any other comments about the regulations and the current and proposed future hourly burden and cost estimates of these requirements.

Part 1—Breakdown of the Financial Institutions Covered by This Notice

Banks are the only financial institutions covered by this notice. FinCEN estimates there are 11,161 banks.[15]

Part 2—Traditional Annual PRA Burden And Cost

The scope of the traditional annual PRA burden was limited to the annual burden of filling out, filing, and maintaining a record of the initial filed DOEP Report.

FinCEN continues to estimate the annual hourly burden of the designation of exempt persons as one hour per form. This estimate covers the burden of: (1) 45 minutes to fill out and file the report; and (2) 15 minutes to save the report electronically and print out a copy to keep in hard-copy files. FinCEN believes that the information required to be included on the DOEP Report is basic information that banks need to maintain to conduct business. The e-filing system prompts banks to save the report after submission.

FinCEN's estimate of the traditional annual PRA burden, therefore, is 18,141 hours, as detailed in Table 1 below:

TABLE 1—BURDEN ASSOCIATED WITH COMPLETION AND MAINTENANCE OF THE REPORT

Type of financial institution	Number of DOEP reports filed in 2019	Time per form		Total burden hours per step		Grand total burden hours
		Completion (filling out and filing) (minutes)	Maintenance (minutes)	Completion (filling out and filing)	Maintenance	
Banks	18,141	45	15	13,605.75	4,535.25	18,141[16]

To calculate the hourly costs of the burden estimate, FinCEN identified three roles and corresponding staff positions involved in filling out, reviewing, filing, and maintaining a copy of the report: (1) General supervision (providing process oversight); (2) direct supervision (reviewing operational-level work, and cross-checking all or a sample of the work product against supporting documentation); and (3) clerical work (engaging in research and administrative review, completing the DOEP Report, and recordkeeping).

FinCEN calculated the fully-loaded hourly wage for each of these three roles by using the median wage estimated by the U.S. Bureau of Labor Statistics

[12] According to the Federal Deposit Insurance Corporation ((FDIC) there were 5,103 FDIC-insured banks as of March 31, 2020. According to the Federal Reserve Board (FRB), there were 203 other entities supervised by the FRB, as of June 16, 2020, that fall within the definition of bank (20 Edge Act institutions, 15 agreement corporations (as defined in 12 CFR 28.2), and 168 foreign banking organizations). According to the National Credit Union Administration there were 5,236 federally regulated credit unions as of December 31, 2019). Approximately 297 state-chartered non-depository trust companies, 228 non-federally insured credit unions, 12 non-federally insured state-chartered banks and savings and loan or building and loan associations, 1 private bank, 29 international banking entities, and 52 international financial entities, all of which are required to implement written AML programs as a result of a final rule issued on September 15, 2020 (85 FR 57129), are also required to keep the records described in this notice.

[13] Based on 2019 filings, FinCEN received 18,141 DOEP Reports.

[14] The burden associated with the CTR obligations is calculated under OMB control number 1506–0064. The burden associated with the SAR obligations is calculated under OMB Control Number 1506–0065.

[15] *See* supra note 10.

[16] In the past PRA burden analysis, FinCEN estimated that the traditional burden to complete and file the DOEP Report for banks was 1 hour (45 minutes for completion of the form and 15 minutes for recordkeeping). (18,141 × .75 minutes = 13,605.75 burden hours for completion of the report) + (18,141 × .25 minutes = 4,535.25 burden hours for maintenance). The total hourly burden is 18,141 hours (13,605.75 + 4,535.25). Going forward this estimate will be different because it will account for the initial eligibility determination, filling out and filing the report, annual review, maintenance of records, maintenance of the monitoring system, and monitoring accounts to report suspicious transactions.

(BLS),[17] and computing an additional benefits cost as follows:

TABLE 2—FULLY-LOADED HOURLY WAGE BY ROLE AND BLS JOB POSITION FOR ALL BANKS COVERED BY THIS NOTICE

Role	BLS-code	BLS-name	Median hourly wage	Benefit factor	Fully-loaded hourly wage
General supervision	11–3031	Financial Manager	$62.45	1.50	$93.68
Direct supervision	13–1041	Compliance Officer	33.20	1.50	49.80
Clerical work (research, review, and recordkeeping)	43–3099	Financial Clerk	20.40	1.50	30.60

FinCEN estimates that, *in general and on average,*[18] each role would spend different amounts of time on each portion of the traditional annual PRA burden, as follows:

For initial filing, the cost of each hour of burden would be one burden hour at $48.00 representing the actual completion and filing of the report broken down by each role as shown in Table 3 below:

TABLE 3—WEIGHTED AVERAGE HOURLY COST OF COMPLETION OF THE DOEP REPORT

General supervision		Direct supervision		Clerical work		Weighted average hourly cost
% Time	Hourly cost	% Time	Hourly cost	% Time	Hourly cost	
10	$9.37	30	$14.94	60	$18.36	$43.00

$42.67 rounded to $43.00.

The total estimated cost of the traditional annual PRA burden is $780,063, as reflected in Table 4 below:

TABLE 4—TOTAL COST OF TRADITIONAL ANNUAL PRA BURDEN

Steps	Hourly Burden	Hourly Cost	Total Cost
Report completion (divided between the roles listed in Table 3).	13,605.75[19]	$43.00[20]	$585,047.25
Maintenance/recordkeeping	4,535.25	$43.00	$195,015.75
Total cost			$780,063

Part 3—Supplemental Annual PRA Burden

In the future, FinCEN intends to add a supplemental annual PRA burden calculation that will include the estimated hourly burden and cost to: (1) Determine the initial eligibility of exempt persons, document the basis for the consideration, and document compliance with the DOEP reporting requirements; (2) conduct an annual review to determine whether certain exempt persons remain eligible for the CTR exemption, and, consistent with that review, to maintain a monitoring system to identify suspicious transactions associated with the accounts of non-listed business and payroll customers; and (3) identify suspicious transactions associated with accounts of non-listed business and payroll customers.

(a) Amended and Revoked Filings

FinCEN assesses that the information required to be included on the DOEP Report is basic information banks need to maintain to conduct business. In addition, FinCEN's electronic filing (e-filing) system allows banks to open a filed electronic DOEP Report that is pre-populated with the information from the prior filing. Banks can amend the status of an exempt person (including *de facto* revoking that status) by selecting Item 1.b (Amend) of the DOEP Report, and submitting the revised report electronically. The e-filing system prompts banks to save the report after submission.

(b) Annual Review

As noted in Section I above, for all identified and reported designation of exempt persons, banks are required to establish and maintain a monitoring system designed to annually review the eligibility of a listed entity, a subsidiary of a listed entity, a non-listed business customer, or a payroll customer to determine whether they remain eligible for the exemption from the banks' requirement to report transactions in currency of over $10,000. As part of the annual review, banks must also review the application of the monitoring system, required to be maintained under 31 CFR 1020.315(h)(2), to each existing account of a non-listed business or payroll customer.

[17] 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/news.release/ecec.nr0.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.

[18] By ''in general,'' FinCEN means without regard to outliers). By ''on average,'' FinCEN means the mean of the distribution of each subset of the population.

[19] Table 1.

[20] Table 3.

FinCEN does not have the necessary information to provide an estimate in this notice of the supplemental PRA hourly burden and cost associated with the annual review of eligibility of exempt persons, the operating rules set out in 31 CFR 1020.315(e), and the monitoring system required under 31 CFR 1020.315(h)(2). In addition, FinCEN does not have all the necessary information to more accurately estimate the traditional annual PRA burden. For that reason, FinCEN is relying on estimates used in prior renewals of this OMB control number and the applicable regulations. FinCEN further recognizes that after receiving public comments as a result of this notice, future traditional annual PRA hourly burden and cost estimates may vary significantly. FinCEN intends to conduct more granular studies of the actions included in the proposed scope of the supplemental annual PRA burden in the near future, to arrive at more accurate estimates of net BSA hourly burden and cost.[21] The data obtained in these studies also may result in a significant variation of the estimated traditional annual PRA burden.

Estimated Recordkeeping Burden: The average estimated annual PRA burden, measured in hours per respondent, is 1 hour (45 minutes to annually fill out and file the report, and fifteen minutes to maintain a record of the report).

Estimated Number of Respondents: 11,161,[22] as set out above.

Estimated Total Annual Responses: 18,141, as set out above.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 18,141 hours, as set out in Table 1.

Estimated Total Annual Recordkeeping Cost: The estimated total annual PRA cost is $780,063, as set out in Table 4.

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.

Part 4—Request for Comments

(a) Specific Request for Comments on the Traditional Annual PRA Hourly Burden and Cost

FinCEN invites comments on any aspect of the traditional annual PRA burden, as set out in Part 2 of this notice. In particular, FinCEN seeks comments on the adequacy of: (1) FinCEN's assumptions underlying its burden estimate; (2) the estimated number of hours required by each portion of the burden; and (3) the organizational roles of the bank engaged in each portion of the burden, the roles' estimated hourly remuneration, and the estimated proportion of time spent by each role on the requirements. FinCEN encourages commenters to include any publicly available sources for alternative estimates or methodologies.

(b) Specific Request for Comments on the Proposed Criteria for Determining the Scope of a Supplemental Annual PRA Hourly Burden and Cost Estimate

FinCEN invites comments on any aspect of the criteria for a future estimate of the supplemental annual PRA burden, as set out in Part 3 of this notice.

(c) Specific Request for Comments on the Appropriate Criteria, Methodology, and Questionnaire Required To Obtain Information To More Accurately Estimate the Supplemental Annual PRA Hourly Burden and Cost

FinCEN invites comments on the most appropriate and comprehensive means to question banks about the annual hourly burden and cost attributable solely to comply with the DOEP reporting requirements (*i.e.,* the hourly burden and cost of complying with the requirements imposed exclusively by the BSA, which are not used to satisfy other regulatory requirements or business purposes of a bank).

The supplemental annual PRA hourly burden and cost estimate of the recordkeeping and reporting necessary to comply with the transactions of exempt persons regulations (determination of eligibility, maintenance of records, annual review, maintenance of monitoring system, and reporting of suspicious transactions) must take into consideration only the effort involved in obtaining those data elements that are used exclusively for complying with requirements under 31 CFR 1020.315. Given the complexity in determining that effort and how to incorporate it into the estimate, FinCEN seeks comments from the public regarding any questions we should consider posing in future notices, in addition to the specific questions for comment outlined directly below. While FinCEN has information on the number and type of DOEP Reports, FinCEN is unable to more accurately allocate the estimates among the number of banks. FinCEN welcomes any suggestions as to how to derive these estimates by using publicly available financial information.

(d) Specific Questions for Comment Associated With the Transactions of Exempt Persons Regulations and the DOEP Report:

(1) Determination of Exempt Person

- On average, how many accounts does your bank maintain for which the account holder meets the definition of exempt person?
- On average, how many accounts does your bank maintain that require a determination as to whether the accountholder meets the definition of exempt person?
- On average, how many accounts does your bank maintain for which the account holder meets the definition of a listed business or is a subsidiary of a listed business?
- On average, how many accounts does your bank maintain for which the account holders are non-listed businesses or payroll customers?
- On average, how long does the review process take to determine if an accountholder is eligible for a designation of exempt person status?
- On average, how long does the completion and filing of a DOEP Report take?
- On average, how many employees, officers, or managers are responsible for determining the eligibility of exempt persons?
- Which roles are typically more involved and how long does each role spend on determining the eligibility of exempt persons?
- How many approvals are necessary to determine the eligibility of exempt persons? To finalize and submit the DOEP Report?

(2) Initial and Amended DOEP Reports

- On average, how many initial DOEP Reports does your bank file on an annual basis?
- On average, how long does it take your bank to complete an initial filing?
- On average, how frequently does your bank amend a report?
- On average, how long does it take your bank to amend a report, including

[21] Net hourly burden and cost are the burden and cost a person (in the case of the DOEP Report, a bank) incurs to comply with requirements that are unique to the BSA, and that do not support any other business purpose or regulatory obligation of the person. Burden for purposes of the PRA does not include the time and financial resources needed to comply with an information collection, if the time and resources are for activities a business (or other person) ordinarily undertakes if the government agency calculating the burden demonstrates that the reporting activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2).

[22] Although 11,109 banks were eligible to file DOEP Reports, only 2,133 banks filed DOEP Reports in 2019 and FinCEN received a total of 18,141 DOEP Reports. Of the 18,141 DOEP Reports received in 2019, FinCEN received 9,464 initial reports, 4,444 amended reports, 4,223 DOEP revoked reports, and 10 reports not classified as initial, amended, or revoked.

as a *de facto* method of revoking an exemption?

• On average, how many employees are involved and how many approvals are necessary to complete an initial or amended filing?

• Does your bank have a review and approval process involving senior management to evaluate the conclusions reached in the determination for eligibility of an exempt person?

• Does your bank have a review and approval process involving senior management for amending or revoking the eligibility of an exempt person? On average, how long does the review process take and how many approvals are necessary?

(3) Annual Review

• On average, how often does your bank review the eligibility of an exempt person?

• On average, how many accounts where the accountholder is an exempt person does your bank review at least annually?

• Does your bank maintain a monitoring system to comply with the DOEP reporting requirements?

• Does your bank review the monitoring system at least once a year?

• On average, how long does it take to review the monitoring system and how many approvals are necessary?

• Does your bank maintain records of the annual review?

• On average, how long does it take to prepare and maintain records of the review?

• Does your bank have a review and approval process involving senior management to evaluate the conclusions reached in the annual review of eligibility?

• On average, how long does the annual review process take and how many approvals are necessary?

(4) Monitoring System

• Does your bank maintain a separate monitoring system to track designation of exempt persons for reasons other than to comply with the reporting requirements under 31 CFR 1020.315?

• Does your bank maintain a separate monitoring system to identify suspicious activity associated with the accounts of designated exempt persons?

• Does your bank have a review and approval process involving senior management to evaluate the conclusions reached in the determination of whether a SAR must be filed for an exempt account? On average, how long does the review process take and how many approvals are necessary?

(e) 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: (1) 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; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) 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 5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Kenneth A. Blanco,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2021–01451 Filed 1–22–21; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On January 15, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individual

1. ALVAREZ CASAS, Lazaro Alberto, Cuba; DOB 1963; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839, 3 CFR, 2018 Comp., p. 399, (E.O. 13818) for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

Entity

1. MINISTRY OF INTERIOR (a.k.a. MINISTERIO DEL INTERIOR; a.k.a. ''MININT''), Aranguren and Carlos Manuel de Cespedes, Havana, Cuba; Organization Established Date Jun 1961 [GLOMAG].

Designated pursuant to section 1(a)(ii)(A) of E.O. 13818 for being a foreign person who is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse.

Dated: January 15, 2021.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–01521 Filed 1–22–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Limitations on Credit or Refund

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 limitations on credit or refund.

DATES: Written comments should be received on or before March 26, 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 Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitations on Credit or Refund.

OMB Number: 1545–1649.

Revenue Procedure: Revenue Procedure 99–21.

Abstract: Generally, under section 6511(a), a taxpayer must file a claim for credit or refund of tax within three years after the date of filing a tax return or within two years after the date of payment of the tax, whichever period expires later. Under section 6511(h), the statute of limitations on claims for credit or refund is suspended for any period of an individual taxpayer's life during which the taxpayer is unable to manage his or her financial affairs because of a medically determinable mental or physical impairment, if the impairment can be expected to result in death, or has lasted (or can be expected to last) for a continuous period of not less than 12 months.

Current Actions: There is no change in the paperwork burden previously approved by OMB. The revenue procedure is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 48,200.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 24,100.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–01465 Filed 1–22–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Treaty-Based Return Position Disclosure

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 treaty-based return position disclosure.

DATES: Written comments should be received on or before March 26, 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 Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Treaty-Based Return Position Disclosure.

OMB Number: 1545–1354.

Form Number: Form 8833.

Abstract: Form 8833 is used by taxpayers that are required by section 6114 to disclose a treaty-based return position to disclose that position. The form may also be used to make the treaty-based position disclosure required by regulations section 301.7701(b)–7(b) for ''dual resident'' taxpayers.

Current Actions: There is no change in the paperwork burden previously approved by OMB. The form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 4,100.

Estimated Time per Response: 6 hours, 16 minutes.

Estimated Total Annual Burden Hours: 25,740 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–01478 Filed 1–22–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs is amending the system of records currently entitled ''Health Program Evaluation—VA'' (107VA008B) as set forth in the **Federal Register**. VA is amending the system by updating Routine Uses of Records Maintained in the System, Safeguards, Retention and Disposal, and System Manager and Address as well as Notification Procedure. VA is republishing the system notice in its entirety.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to Health Program Evaluation—VA (107VA008B). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Enterprise Integration (OEI), Ryan J. Stiegman, Privacy Officer, U.S. Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420; telephone (202) 461–5800.

SUPPLEMENTARY INFORMATION:

Health Program Evaluation—VA (107VA008B) has been amended to reflect the current organizational alignment; new mail addresses, and updated point of contact information. The Department has also made minor edits to the System Notice for clarity, completeness, grammar, and to reflect plain language.

The System Location Section has been amended to provide an update to the name of VA's Austin Information Technology Center at 1615 Woodward St., Austin, TX 78772.

The System Manager, Notification Procedure, Record Access Procedure and Contesting Record Procedures name and address information have been changed to reflect new organizational alignments. The System Manager is Executive Director, Office of Enterprise Integration, Data Governance and Analytics (008B1), VA Central Office, 810 Vermont Ave. NW, Washington, DC 20420. Finally, the Report of Intent to Publish has been amended to include a link to a more complete description of the duties and activities of the Office of Enterprise Integration at *http://www.va.gov/OP3.*

Minor changes to Routine Use language have been done in updating language to use VA's library of approved VA routine uses. Changes to improve clarity or organizational address information include the following Routine Uses.

Routine Use One (1) has been amended for clarification to ''VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.'' VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

Routine Use Two (2) has been amended to use current updated language for National Archives and Record Administration (NARA) and General Services Administration (GSA) that reads ''VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under title 44, U.S.C.'' NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

Routine Use Four (4) has been amended to use current VA update language for this use. This language states ''VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.''

''This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.''

This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A–130, App. I, paragraph 5a (1) (b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

Routine Use Six (6) has been amended to use the current VA update language for this particular use. This amendment reads ''VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or

programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.''

This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724.

a. Effective Response. A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

b. Disclosure of Information. Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. 552a (b) (3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

Routine Use Seven (7) providing current posting location of ''Privacy Act Guidance—Update'' has been amended to *http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-15.pdf.*

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Routine Use Eight (8) VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may only disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on April 17, 2020 for publication.

Dated: January 19, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

107VA008B

SYSTEM NAME:

Health Program Evaluation—VA

SYSTEM LOCATION:

Electronic records are located on the Department of Veterans Affairs' (VA's) secured servers housed at VA's Austin Information Technology Center, 1615 Woodward St., Austin, TX 78772. Records necessary for a contractor to perform under a VA-approved contract are located at the respective contractor's facility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority to maintain this system of Record is contained in Title 38, U.S.C 527.

PURPOSE(S):

For the conduct of health-related qualitative, quantitative, and actuarial analyses and projections to support policy analyses and recommendations for improving VA services for Veterans and their families. Analysis and review of health data, policy and planning issues affecting Veterans programs to support legislative, regulatory, policy recommendations and initiatives.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans who have applied for healthcare services or benefits under 38 U.S.C.
2. Veterans' spouse, surviving spouse, previous spouse, children, and parents who have applied for healthcare services or benefits under 38 U.S.C.
3. Beneficiaries of other Federal agencies or other governmental entities.
4. Individuals examined or treated under contract or resource sharing agreements.
5. Individuals examined or treated for research or donor purposes.
6. Individuals who have applied for 38 U.S.C. benefits but who do not meet the requirements under 38 U.S.C. to receive such benefits.
7. Individuals who were provided medical care under emergency conditions for humanitarian reasons.
8. Pensioned members of allied forces provided healthcare services under 38 U.S.C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include identification numbers, contact and location information, demographic information,

military service descriptions, residency characteristics, economic information, healthcare visit descriptions, patient assessments, medical test descriptions and results, diagnoses, disability assessments, treatments, pharmaceutical information, service utilization and associated medical staffing and resource costs, entitlements or benefits, patient survey results, and health status. The records include information created or collected during the course of normal clinical operations work and is provided by patients, employers, students, volunteers, contractors, subcontractors, and consultants. In addition, records also include social security numbers, military service numbers, claim or file numbers, and DoD's identification numbers.

RECORD SOURCE CATEGORIES:

Information is obtained from VHA and other VA staff offices and Administrations, OPP's National Survey of Veterans, national survey's (*e.g.* National Long-Term Care Survey, National Health Interview Survey), Federal Agencies (*e.g.* Department of Defense, Department of Health and Human Services), state agencies, and other private and public health provider data sources or insurance programs and plans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under title 44, U.S.C.

3. Any system records may be disclosed to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and OEI has determined prior to the disclosure that OEI data handling requirements are satisfied. OEI may disclose limited individual identification information to another Federal agency for the purpose of matching and acquiring information held by that agency for OEI to use for the purposes stated for this system of records.

4. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

5. Any system records may be disclosed to the Office of Management and Budget in order for them to perform their statutory responsibilities of evaluating Federal programs.

6. VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

7. VA may disclose information in this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. In determining whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update'', currently posted at *http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-15.pdf*.

8. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

VA sensitive information, including individually identifiable health information, is stored on a segregated secure server. Data stored on secure servers are located at the Austin Information Technology Center (AITC). Databases are temporarily placed on a secured server inside a restricted network area for data match purposes only. Information that resides on a segregated server is kept behind locked doors with limited access. Requestors of OEI stored health information within VA, or from external individuals, contractors, organizations, and/or

agencies with whom VA has a contract or agreement, must provide an equivalent level of security protection and comply with all applicable VA policies and procedures for storage and transmission as codified in VA directives such as but not limited to *VA Handbook 6500.*

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Individually-identified health care information is kept in two forms. The first form is the original data file containing the names and social security numbers of the record subjects. OEI assigns unique codes derived from social security numbers to these individual records prior to conducting analyses on the data. The original records may be retrieved using social security number, military service number, claim or file number, DoD identification number, or other personal numerical identifiers. The records containing the encrypted identifiers may be retrieved only by those identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Electronic records are archived to provide verification of analysis and to provide data for identifying trends that effect veteran beneficiaries and their VA programs. Destruction of any sensitive Personally Identifiable Information (PII) or Protected Health Information (PHI) data is done by deleting information on OIT national data support servers. OEI no longer stores paper beneficiary records in its facilities. Records are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. If the Archivist has not approved disposition authority for any records covered by the system notice, the System Manager will take immediate action to have the disposition of records in the system reviewed and paperwork initiated to obtain an approved records disposition authority in accordance with VA Handbook 6300.1, Records Management Procedures. OEI will publish an amendment to this notice upon issuance of NARA-approved disposition authority. The records may not be destroyed until VA obtains an approved records disposition authority. OEI destroys electronic files when no longer needed for administrative, legal, audit, or other operational purposes. In accordance with Title 36 Code of Federal Regulations (CFR), Section 1234.34, Destruction of Electronic Records, ''electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules.''

PHYSICAL, PROCEDURAL AND ADMINISTRATIVE SAFEGUARDS:

This list of safeguards furnished in this System of Record is a general statement of measures taken to protect health information. For example, Health Insurance Portability and Accountability Act (HIPAA) guidelines for protecting health information will be followed and OEI will adopt evolving health care industry best practices in order to provide adequate safeguards. Further, VA policy directives that specify the standards that will be applied to protect record level information will be provided to VA staff and contractors through mandatory data privacy and security training.

Access to data storage areas is restricted to authorized VA employee or contract staff who has been cleared to work by the VA Office of Operations, Security, and Preparedness. Health information file areas are locked after normal duty hours. VA facilities are protected from outside access by the Federal Protective Service and/or other security personnel.

Access to health information provided by the Veterans Health Administration (VHA) pursuant to a Business Associate Agreement (BAA) is restricted to those OEI employees and contractors who have a need for the information in the performance of their official duties related to the terms of the BAA. As a general rule, full sets of health care information are not provided for use unless authorized by the System Manager the Executive Director for OEI Data Governance and Analysis (DG&A). File extracts provided for specific official uses will be limited to the minimum necessary amount and contain only the information fields needed for the analysis. Data used for analyses will have individual identifying characteristics removed whenever possible.

Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Health information files containing unique identifiers such as social security numbers are encrypted to NIST-verified FIPS 140–2 standard or higher for storage, transport, or transmission. The primary site for data analysis, storage and transfer is located on a segregated server at the Austin Information Technology Center. All files containing PII in transit or at rest are encrypted. Files are kept encrypted at all times except when data is in immediate use, per specifications by VA Office of Information Technology. NIST publications were consulted in development of security for this system of records.

Contractors and their subcontractors are required to maintain the same level of security as VA staff for health care information that has been disclosed to them. Any data disclosed to a contractor or subcontractor to perform authorized analyses requires the use of Data Use Agreements, Non-Disclosure Statements and Business Associates Agreements to protect health information. Unless explicitly authorized in writing by the VA, sensitive or protected data made available to the contractor and subcontractors shall not be divulged or made known in any manner to any other person. Other federal or state agencies requesting health care information need to execute Data Use Agreements to protect data.

SYSTEM MANAGER(S) AND ADDRESS (ES):

OEI's System Manager is Kshemendra Paul, Executive Director, Office of Enterprise Integration, Data Governance and Analytics (008B1), VA Central Office, 810 Vermont Ave. NW, Washington, DC 20420, 202–461–1052, *Kshemendra.Paul@va.gov.*

RECORD ACCESS PROCDEURE:

An individual (or duly authorized representative of such individual) who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the individuals listed under Notification Procedure below.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to the System Manager, Executive Director, Office of Enterprise Integration, Data Governance and Analytics (008B1), VA Central Office, 810 Vermont Ave. NW, Washington, DC 20420. Such requests must contain a reasonable description of the records requested. All inquiries must reasonably identify the health care information involved and the approximate date that medical care was provided. Inquiries should include the patient's full name, social security number, telephone number and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

[FR Doc. 2021–01542 Filed 1–22–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Veterans Health Administration (VHA).

ACTION: Notice of a Modified System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veteran Affairs (VA) is amending the system of records currently entitled ''Virtual Lifetime Electronic Record (VLER)–VA'' (168VA10P2) as set forth in the **Federal Register** 77 FR 27859. VA is amending the system of records by revising the System Name; System Number; System Location; System Manager; Purpose; Categories of Individuals Covered by the System; Category of Records in the System; Records Source Category; Routine Uses of Records Maintained in the System; Policies and Practices for Storage of Records; Policies and Practices for Retrievability of Records; Policies and Practices for Retention and Disposal of Records; Administrative, Technical, and Physical Safeguards; and Record Access Procedure. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than February 24, 2021. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective February 24, 2021.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to Health Information Exchange (HIE)–VA. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Information and Technology (OI&T), Privacy Officer, Department of Veterans Affairs, 1100 First Street NE, Washington, DC 20420, telephone (202) 632–7524. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The System Name is being changed from ''Virtual Lifetime Electronic Record (VLER)–VA'' to ''Health Information Exchange–VA''.

The System Number is changed from 168VA10P2 to 168VA005 to reflect the current departmental alignment.

The System Location is being amended to add Philadelphia Information Technology Center, 3900 Woodland Avenue, Philadelphia, PA 19104; Amazon Web Services (AWS) Government Cloud (GovCloud), 410 Terry Ave North, Seattle, WA 98109 and the Cerner Technology Centers (CTC): Primary Data Center in Kansas City, MO and Continuity of Operations/Disaster Recovery (COOP/DR) Data Center in Lees Summit, MO.

The System Manager is being amended to replace Director Standards and Interoperability, Chief Health Informatics Office/Office of Informatics and Analytics/Veterans Health Information with Chief Technology & Integration Officer Veterans Affairs Office of Electronic Health Record Modernization at 811 Vermont Avenue Office 5084 Washington, DC 20420.

The Purpose is being amended to remove VLER/Nationwide Health Information Network (NwHIN) partners. Being added is information stored in VA computer systems, such as the Data Access Service (DAS) and VA contracted computer systems which are used for benefit and claims adjudication as well as data for VA Data Sharing and Interoperability Initiatives with VA partners. These partners include, but are not limited to, Veteran Health Information Exchange (VHIE) external partners, The Sequoia Project, eHealth Exchange partners, Direct Partners, Carequality, CommonWell, VA-approved third party payers and contracted providers, educational affiliates, Veteran Service Organizations (VSOs), VA AppCatalog Mobile applications, federal agencies (to include Indian Health Service, Bureau of Prisons, Internal Revenue Service (IRS), Social Security Administration (SSA), Department of Defense (DoD), Health and Human Services, and others), and State Registries. This section adds ''for health care operations and reimbursement for care provided'' as purposes of the data.

The Categories of Individuals Covered by the System is being amended to remove caveat of VA employees who access information through VLER to state ''VA employees'' and add VA contractors. In addition, other VA patients, VA contracted and private providers and payers, VA contracted Health Information Handlers, VSO staff, and VA system integrators who resolve information technology (IT) trouble tickets, DoD providers, educational affiliate staff with approved VA access.

The Categories of Records in the System is being amended to add scanned & imported paper records & non-radiology images, Service Treatment Record (STR) (and transformed DAS STR), Community Health Summaries—DoD, Questionnaires and Deployment Assessments (Armed Forces Health Longitudinal Technology Application (AHLTA) only), Contact Logs, Diet, Patient Mood and Immunizations as examples under patient demographic and health information from external health care providers and VHIE external partners; and opt-out forms, participate in sharing after opting out forms and future forms developed for VHIE as examples under information on Veterans' preferences regarding the sharing of their health information. This section will add information on health information exchange and Direct users, claims adjudication information, research records, education information and device or patient created data.

The Records Source Category is being amended to replace 79VA19 with 79VA10A7, 121VA19 with 121VA10A7, and 24VA19 with 24VA10A7. Federal and non-federal VLER/NwHIN partners and DoD is being removed and replaced with VHIE external partners. This section will add eHealth Exchange partners, Carequality and CommonWell, Direct Messaging providers, non-VA care providers, patient or individual device generated data through a VA AppCatalog Mobile application, homeless shelters, government agencies such as DoD, SSA, IRS, Health and Human Services, Bureau of Prisons, Indian Health Services and others, and State Registries.

The Routine Uses of Records Maintained in the System has been amended by amending the language in Routine Use #6 which states that disclosure of the records to the Department of Justice (DoJ) is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of

records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

Routine use #15 is being added to state, ''Disclosure of Veteran identifiers and demographic information (*e.g.,* name, SSN, address, date of birth) may be made to an organization with whom VA has a documented partnership, arrangement or agreement (*e.g.,* Health Information Exchange (HIE), Health Information Service Provider (HISP) Direct, CommonWell Health Alliance network), for the purpose of identifying and correlating patients.'' VA needs this ability to share demographic information for correlation and identification purposes.

Routine use #16 is being added to state, ''VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.'' VA needs this routine use for the data breach response and remedial efforts with another Federal agency.

Routine use #17 is being added to state, To disclose to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

Policies and Practices for Storage of Records is being amended to remove storage area network (SAN) and mobile devices and add electronic storage media including, but not limited to, magnetic tape, disk, laser optical media and solid-state flash media.

The Retrievability section is being amended to add electronic data interchange personal identifier (EDIPI), medical record number, problem list, geographic location and other demographic, medical or medication information.

Policies and Practices for Retention and Disposal is being amended to replace 'in accordance with the records disposition authority approved by the Archivist of the United States, health information stored on electronic media storage is maintained for seventy-five (75) years after the last episode of patient care and then deleted' with GRS 4.3 Items 020, 030, 031 and Electronic Health Records schedule, National Archives and Records Administration (NARA) job #N1–15–02–3, item 1a, 1b, 2, 3, 4, 5, 6.

The Administrative, Technical and Physical Safeguards section is being amended to add, ''Access to Cerner Technology Centers is generally restricted to Cerner employees, contractors or associates with a Cerner issued ID badge and other security personnel cleared for access to the data center. Access to computer rooms housing Federal data, hence Federal enclave, is restricted to persons Federally cleared for Federal enclave access through electronic badge entry devices. All other persons, such as custodians, gaining access to Federal enclave are escorted.''

Records Access Procedure is being amended to replace Director Standards and Interoperability, Chief Health Informatics Office/Office of Informatics and Analytics/Veterans Health Information, with Director, VHIE, Office of Health Informatics/Veterans Health Administration and to add ''or contact their closest VA Medical Center (VAMC)''. Being added to this section is that requests should contain the full name, address and telephone number of the individual making the inquiry.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on July 24, 2020 for publication.

Dated: January 19, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME:

''Health Information Exchange–VA'' (168VA005).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are maintained at Department of Veterans Affairs (VA), Austin Information Technology Center (AITC), 1615 Woodward Street, Austin, TX 78772, Philadelphia Information Technology Center (PITC), 3900 Woodland Avenue, Philadelphia, PA 19104; Amazon Web Services (AWS) Government Cloud (GovCloud), 410 Terry Ave. North, Seattle, WA 98109; and Cerner Technology Centers (CTC): Primary Data Center in Kansas City, MO and Continuity of Operations/Disaster Recovery (COOP/DR) Data Center in Lees Summit, MO.

SYSTEM MANAGER(S):

Official maintaining this system of records and responsible for policies and procedures is Chief Technology & Integration Officer Veterans Affairs, Office of Electronic Health Record Modernization at 811 Vermont Avenue Office 5084 Washington, DC 20420.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 501.

PURPOSE(S) OF THE SYSTEM:

The records and information stored in VA computer systems, including the Data Access Service (DAS) and VA contracted systems, such as Cerner products, may be used for the ongoing communication of current healthcare, benefit and claims adjudication data, for VA Data Sharing and interoperability initiatives with VA partners. These

partners include, but are not limited to, Veteran Health Information Exchange (VHIE) external partners, The Sequoia Project and eHealth Exchange partners, Direct Partners, Carequality, CommonWell, VA-approved third party payers and contracted providers, educational affiliates, Veteran Service Organizations (VSOs), VA AppCatalog Mobile applications, State Registries and federal agencies (to include Indian Health Service, Bureau of Prisons, IRS, DoD, Health and Human Services, and others). This data is used to promote improved quality of patient care, reduce duplicative ordering of tests, services and pharmaceuticals; for statistical analysis to produce various management, workload tracking, and follow-up reports; to track the ordering and delivery of equipment, services and patient care; for the planning, distribution and utilization of resources; to monitor the performance of Veterans Integrated Service Networks (VISN); to allocate clinical and administrative support to patient to include but not limited to Healthcare treatment, disability adjudication, and benefits, and for health care operations and reimbursement for care provided.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records contain information on Veterans and the family members or caregivers; members of the armed services, Reserves or National Guard, other VA patients, VA employees and contractors, VA contracted and private providers and payers, VA contracted Health Information Handlers, VSO staff, DoD providers, education affiliate staff with approved VA access, and VA system integrators who resolve information technology (IT) trouble tickets.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include patient demographic information (*e.g.,* electronic data interchange personal identifier (EDIPI), name, address, phone numbers, date of birth, social security number); patient demographic and health information from external health care providers and VHIE external partners, *e.g.,* medications, allergies, consultations and referrals, history and physicals, discharge summaries, diagnostic studies, procedures notes, advanced directives, problem lists, laboratory results, lists of procedures and encounters, scanned & imported paper records & non-radiology images, Service Treatment Records (STR) (and transformed DAS STR), Community Health Summaries—DoD, Questionnaires and Deployment Assessments (Armed Forces Health Longitudinal Technology Application [AHLTA] only), Contact Logs, Diet, Patient Mood, and immunizations, benefits information (*e.g.,* disability rating, service connection rating), information on Veterans' preferences regarding the sharing of their health information (*e.g.,* authorizations, restriction requests, revocation of authorizations, opt-out forms, participate in sharing after opting out forms and future forms developed for VHIE, information on VHIE and Direct users, claims adjudication information, research records and education information, as well as device- or patient-created data relating to the above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by Veterans and their family members or caregivers, members of the Armed Services, Reserves or National Guard, other VA patients, VA employees and contractors, VA computer systems, Veterans Health Information Systems and Technology Architecture (VistA)-VA (79VA10A7), National Patient Databases-VA (121VA10A7), Patient Medical Record—VA (24VA10A7), VA contracted computer systems, HIE external partners, Direct Messaging providers, non-VA care providers, VA AppCatalog Mobile application, homeless shelters, State Registries, and government agencies such as DoD, SSA, IRS, Health and Human Services, Bureau of Prisons, Indian Health Services and others.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. VA may disclose any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. Disclosure may be made to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an individual's eligibility, care history, or other benefits.

3. Disclosure of information to a health participant for the purpose of providing care or treatment to VA patients, reimbursement for health care services, or determining eligibility for government disability benefits.

4. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

5. Disclosure may be made to NARA and the General Services Administration (GSA) in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

6. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

7. Disclosure may be made to a national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of

licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

8. VA may disclose information to officials of the Merit Systems Protection Board MSPB), or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

9. VA may disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation.

10. VA may disclose to the Fair Labor Relations Authority (FLRA) (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasse Panel, and to investigate representation petitions and conduct or supervise representation elections.

11. Disclosures of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform the services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

12. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

13. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

14. VA may disclose information from this system to a Federal agency for the purpose of conducting research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and VA has determined prior to the disclosure that the VA data handling requirements are satisfied.

15. Disclosure of Veteran identifiers and demographic information (*e.g.,* name, SSN, address, date of birth) may be made to an organization with whom VA has a documented partnership, arrangement or agreement (*e.g.,* Health Information Exchange (HIE), Health Information Service Provider (HISP) Direct, CommonWell Health Alliance network), for the purpose of identifying and correlating patients.

16. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

17. To disclose to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on electronic storage media including, but not limited to, magnetic tape, disk, laser optical media and solid-state flash media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by electronic data interchange personal identifier (EDIPI), problem list, geographic location and other demographic, medical or medication information, name, social security number or other assigned identifiers of the individuals on whom they are maintained. For reporting purposes records can also be retrieved by Internal Control Number (ICN).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

GRS 4.3 Items 020, 030, 031 and Electronic Health Records schedule, NARA job #N1–15–02–3, item 1a, 1b, 2, 3, 4, 5, 6.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to and use of national administrative databases, warehouses, and data marts are limited to those persons whose official duties require such access, and the VA implements Federal Information Security Management Act mandated security protocols or, when appropriate, has established security procedures to ensure that access is appropriately limited. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually unique codes and passwords. VA provides information security training to all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality.

2. Physical access to computer rooms housing national administrative databases, warehouses, and data marts is restricted to authorized staff and protected by a variety of security devices. Unauthorized employees, contractors, and other staff are not allowed in computer rooms. The Federal Protective Service or other security personnel provide physical security for the buildings housing computer rooms and data centers.

3. Data transmissions between operational systems and national administrative databases, warehouses,

and data marts maintained by this system of record are protected by state-of-the-art telecommunication software and hardware. This may include firewalls, intrusion detection devices, encryption, and other security measures necessary to safeguard data as it travels across the VA Wide Area Network.

4. In most cases, copies of back-up computer files are maintained at off-site locations.

5. Access to Cerner Technology Centers is generally restricted to Cerner employees, contractors or associates with a Cerner issued ID badge and other security personnel cleared for access to the data center. Access to computer rooms housing Federal data, hence Federal enclave, is restricted to persons Federally cleared for Federal enclave access through electronic badge entry devices. All other persons, such as custodians, gaining access to Federal enclave are escorted.

6. The AWS GovCloud infrastructure as a service cloud-computing environment has been authorized at the high-impact level under the Federal Risk and Authorization Management Program (FedRAMP). The secure site-to-site encrypted network connection is limited to access via the VA trusted internet connection (TIC).

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records in this system may write the Director, VHIE, Office of Health Informatics/Veterans Health Administration at VACO, 810 Vermont Avenue NW, Washington, DC 20420, or contact their closest VAMC. Requests should contain the full name, address and telephone number of the individual making the inquiry.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURES:

Individuals who wish to determine whether this system of records contains information about them should contact their closest VAMC. Inquiries should include the person's full name, social security number, location and dates of treatment or location and dates of employment and their return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 77 FR 27859 dated May 11, 2012.

[FR Doc. 2021–01516 Filed 1–22–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Veterans Health Administration (VHA).

ACTION: Notice of a new system of records.

SUMMARY: The Privacy Act of 1974 requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled, ''Community Care (CC) Provider Profile Management System (PPMS)–VA'' (186VA10D).

DATES: Comments on this new system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments concerning the new system of records may be submitted by: Mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; fax to (202) 273–9026; or Email to *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''Community Care Provider Profile Management System (PPMS)–VA'' (186VA10D). All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

FOR FURTHER INFORMATION CONTACT: CC Program Manager Office of Information and Technology (OIT), Enterprise Portfolio Management Division (EPMD), St. Petersburg Field Office, 9500 Bay Pines Boulevard, St. Petersburg, Florida 33708, Mailing Address: P.O. Box 1437, St. Petersburg, Florida 33708; telephone at (727) 230–9032 (this is not a toll-free number). VHA Office of Community Care, P.O. Box 469066, Denver, Colorado 80246.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

The Community Care (CC) Provider Profile Management System (PPMS) is focused on the implementation and maintenance of a provider directory to be used by the multiple VA portfolios in maintaining the Community Care Network (CCN), TriWest Patient-Centered Community Care (PC3) and Choice Program, Individual Care Agreements, Veteran Care Agreements, VA Medical Center (VAMC) Local Contracts, Indian Health Service Providers, Department of Defense facilities, and VAMC providers.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following Routine Use disclosures of information maintained in the system. PPMS will collect and retain personally identifiable information on non-VA health care providers. VA Provider publically available data is retained in the system, no personally identifiable information is collected on VA providers. These providers will be conducting health services with VA.

1. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or

adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation.

4. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement. This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

5. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation. VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

6. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

7. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law. VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

8. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under title 44, U.S.C. NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

9. VA may disclose relevant information to: (1) A Federal agency or CC institutions and providers when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services and the information is needed by the Federal agency or non-VA institution or provider to perform the services; or (2) a Federal agency or to a non-VA hospital (Federal, state, and local public or private) or other medical installation having hospital facilities, organ banks, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or for VA to effect recovery of the costs of the medical care.

10. VA may disclose information in this system, to a Federal, state, or local agency maintaining civil or criminal violation records, or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational background in order for VA to obtain information relevant to the hiring, transfer or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

11. VA may disclose information from this system of records to a Federal agency or the District of Columbia government, in response to its request, in connection with the hiring or retention of an employee and the issuance of a security clearance as required by law, the reporting of an investigation of an employee, the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

12. Any information in this system may be disclosed to a state or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision on: The hiring, transfer or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit by the agency; provided, that the name and address is provided first by the requesting state or local agency.

13. VA may disclose information concerning CC providers, including name, address, and national provider idententification numbers which may be disclosed to the Department of the Treasury, Internal Revenue Service, to report calendar year earnings of $600 or more for income tax reporting purposes.

14. VA may disclose information to the Department of the Treasury to facilitate payments to physicians, clinics, and pharmacies for reimbursement of services rendered, and to veterans for reimbursements of authorized expenses, or to collect, by set off or otherwise, debts owed the United States.

15. VA may disclose any relevant information from this system of records to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and to courts, boards, or commissions, but only to the extent necessary to aid VA in the preparation, presentation, and prosecution of claims authorized under Federal, state, or local laws, and regulations promulgated thereunder.

16. VA may disclose identifying information in this system, including name, address, social security number, and other information as is reasonably necessary to identify such individual, to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/re-privileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention, or termination of the applicant or employee.

17. VA may disclose relevant information from this system of records to the National Practitioner Data Bank and/or State Licensing Board in the state(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice, if an appropriate determination is made in accordance with Department policy that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist, either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

18. VA may disclose information from this system of records to a Federal agency or to a state or local government licensing board and/or to the Federation of State Medical Boards or a similar non-governmental entity which maintains records concerning individuals' employment histories or concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty, to inform a Federal agency or licensing boards or the appropriate non-governmental entities about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

19. For program review purposes and the seeking of accreditation and/or certification, VA may disclose health care information to survey teams of the Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with which VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

20. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

21. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

22. VA may disclose information in this system which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of providers to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, to provide a benefit to VA, or to disclose information as required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR parts 160 and 164. Veterans Health Administration (VHA) may not disclose individually identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by HHS' Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this new system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule, before VHA may disclose the covered information.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director, Office of Management and Budget, as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information

Officer, approved this document on May 15, 2020 for publication.

Dated: January 19, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Community Care (CC) Provider Profile Management System (PPMS)-VA (186VA10D)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are managed by the VHA Office of Community Care (Program Office), 3773 Cherry Creek North Drive, Denver, CO 80209.

Microsoft Azure Cloud customer service: 1–855–270–0615, Privacy Data Management: *https://azure.microsoft.com/en-us/privacy-data-management/*.

SYSTEM MANAGER(S):

CC Program Manager, VHA Office of Community Care, P.O. Box 469066, Denver, CO 80246. Telephone number 303–398–3479 (this is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 104–191; 5 U.S.C. 301; 38 U.S. Code § 1703; 45 Code of Federal Regulations (CFR) part 164; and 4 CFR 103.

PURPOSE(S) OF THE SYSTEM:

The Community Care (CC) Provider Profile Management System (PPMS) is a comprehensive repository of information of VA community providers. PPMS collect and retain personally identifiable information on CC health care providers or CC providers. VA maintains a directory of medical providers internal VAMC medical providers and external CC providers which comprise the Community Care Provider Network.

Provider data is collected in two ways. The CC provider's date of birth, tax identification number and/or Social Security Number will be collected by CCN contractors and submitted electronically directly to PPMS via PPMS secure Integrated Web Services (IWS). A second method of collecting the date is by the Medical Support Assistants (MSA), Program Support Assistants (PSA), Registered Nurses (RN), and Social Workers (Geriatrics and Extended Care (GEC)) at the local VA facility. PPMS will provide increased timeliness and quality service to Veterans by improved tracking of provider relationships and validating data elements, as well as enterprise wide accessibility to a comprehensive list of provider information for referrals and scheduling CC services for Veterans.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records may include information on:

(1) VA health care providers: This may include, but not limited to Dentists, Licensed Practical or Vocational Nurses, Registered Nurses, Audiologists, Physician Assistants, Physicians, Podiatrists.

(2) Non-VA health care providers (CC providers) who through a contractual agreement or other agreement may be providing health care services to VA patients.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include VA providers and non-VA provider's information related to: name, status, provider type, provider name, national provider identifier/index, provider identifier type, status reason, quality ranking total score, quality ranking last updated, preferred provider, main phone, email, billing address, internal control number, geo code, language, license number, drug enforcement administration registration number, certification, tax identification/social security number and non-VA provider's date of birth.

RECORD SOURCE CATEGORIES:

Medical Providers or accredited representatives, and other third parties; private medical facilities and health care professionals; other Federal agencies; employees; contractors; VHA facilities and automated systems providing clinical and managerial support at VA health care facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. VA may disclose information in this system of records to DoJ, either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation.

4. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement. This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the

service to VA. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with the Office of Management and Budget (OMB) guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

5. VA may disclose information from this system to EEOC when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation. VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

6. VA may disclose information from this system to FLRA, including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

7. VA may disclose information from this system to the Merit Systems Protection Board, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law. VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

8. VA may disclose information from this system to NARA and GSA in records management inspections conducted under title 44, U.S.C. NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

9. VA may disclose relevant information to: (1) A Federal agency or CC institutions and providers when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services and the information is needed by the Federal agency or non-VA institution or provider to perform the services; or (2) a Federal agency or to a non-VA hospital (Federal, state, and local public or private) or other medical installation having hospital facilities, organ banks, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or for VA to effect recovery of the costs of the medical care.

10. VA may disclose information in this system, to a Federal, state, or local agency maintaining civil or criminal violation records, or other pertinent information such as prior employment history, prior Federal employment background investigations, and/or personal or educational background in order for VA to obtain information relevant to the hiring, transfer or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

11. VA may disclose information from this system of records to a Federal agency or the District of Columbia government, in response to its request, in connection with the hiring or retention of an employee and the issuance of a security clearance as required by law, the reporting of an investigation of an employee, the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

12. Any information in this system may be disclosed to a state or local agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision on: The hiring, transfer or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit by the agency; provided, that the name and address is provided first by the requesting state or local agency.

13. VA may disclose information concerning CC institutions and providers, including name, address, and social security or employer's taxpayer identification numbers, may be disclosed to the Department of the Treasury, Internal Revenue Service, to report calendar year earnings of $600 or more for income tax reporting purposes.

14. VA may disclose information to the Department of the Treasury to facilitate payments to physicians, clinics, and pharmacies for reimbursement of services rendered, and to veterans for reimbursements of authorized expenses, or to collect, by set off or otherwise, debts owed the United States.

15. VA may disclose any relevant information from this system of records to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and to courts, boards, or commissions, but only to the extent necessary to aid VA in the preparation, presentation, and prosecution of claims authorized under federal, state, or local laws, and regulations promulgated thereunder.

16. VA may disclose identifying information in this system, including name, address, social security number, and other information as is reasonably necessary to identify such individual, to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/re-privileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention, or termination of the applicant or employee.

17. VA may disclose relevant information from this system of records to the National Practitioner Data Bank and/or State Licensing Board in the state(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice, if an appropriate determination is made in accordance with Department policy that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the individual; (2) a final decision

which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist, either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

18. VA may disclose information from this system of records to a Federal agency or to a state or local government licensing board and/or to the Federation of State Medical Boards or a similar non-governmental entity which maintains records concerning individuals' employment histories or concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty, to inform a Federal agency or licensing boards or the appropriate non-governmental entities about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

19. For program review purposes and the seeking of accreditation and/or certification, VA may disclose health care information to survey teams of the Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with which VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

20. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

21. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

22. VA may disclose information in this system which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of providers to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

PPMS is a repository hosted on the Microsoft Azure Government (MAG) Cloud for provider records which are received electronically from the CCNs. The CCNs collect the provider data, including the date of birth and tax identification number/social security number, directly from the provider and stores it in a mechanism outside of VA. The records are electronically transmitted from the CCN to VA using secure integrated web services where they are stored in PPMS behind the VA firewall.

A second source of provider data are the CC Managers, MSA, PSA, RN, and Social Workers (GEC) at a local VA facility, who have taken the PPMS training, communicate directly with non-VA care providers and set up the provider in PPMS so they may be used in referrals for Veteran care. They will enter the data, including the date of birth and tax identification number/social security number, into PPMS which is behind the VA firewall. The date of birth and tax identification number/social security number information is a field in PPMS and is an attribute of the providers' profile level of data.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

For users internal to VA, electronic records are retrieved via the PPMS Customer Relationship Management (CRM) Tool interface using the Provider's name or NPI number. Only approved VA employees whom are provisioned with PPMS access are authorized to access records. Records are retrieved by name, speciality, date of birth, tax identification number/social security number, or other assigned identifiers of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Record Control Schedule (RCS) 10–1 item 1150 Office of Quality and Performance 1150.1. Health Care Provider Credentialing and Privileging Records. Electronic Files. Electronic version of information entered directly into the electronic credentialing and privileging record information system. Temporary; delete 30 years after the last episode of employment, appointment, contract, etc. from VA. (N1–015–10–07, Item 1)

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. PPMS is a customized Microsoft Dynamics 365 solution deployed on a FedRAMP Accredited Microsoft Dynamics CRM Online for Government (CRMOL) Cloud Platform. Microsoft Dynamics 365 includes several security features that provide PPMS administrators with the ability to implement a variety of administrative and technical safeguards which include:

—Account management using Microsoft Active Directory to centrally manage user accounts

—User authorization through two-factor, single sign-on, authentication

—Access control using role-based access control

—Data protection through encrypting of data-at-rest

—Auditing of user access and changes to PPMS data

Additional physical security safeguards are also implemented within the Microsoft Azure Data Center on which PPMS is deployed. Microsoft Azure maintains overall responsibility for the oversight of data center operations including physical security, site services (server deployments and break/fix work), infrastructure build-out, critical environment operations and maintenance, and facilities management. Data Center site security officers monitor the physical security of the facility 24 x 7.

2. The PPMS system is hosted in MAG Cloud infrastructure as a service cloud-computing environment that has been authorized at the high-impact level under the Federal Risk and Authorization Management Program (FedRAMP). The secure site-to-site

encrypted network connection is limited to access via the VA Trusted internet Connection.

3. Access to PPMS is provisioned by a Service Now ticket routed to the PPMS Operations & Maintenance (O&M) team who grants access based on proven PPMS training completion by the individual requesting access. Access is monitored by O&M on a weekly basis due to limited number of licenses purchased for the CRM product.

RECORD ACCESS PROCEDURES:

An individual who seeks access to records maintained under his or her name in this system may submit a written request to VHA Office of Community Care, (Privacy Office) P.O. Box 469060, Denver, Colorado 80246–9060, or apply in person to the VHA Office of Community Care, 3773 Cherry Creek North Drive, Suite 470, Denver, Colorado 80209.

CONTESTING RECORD PROCEDURES:

(*See* Record Access Procedures *above*.)

NOTIFICATION PROCEDURES:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to VHA Office of Community Care, (Privacy Office), P.O. Box 469060, Denver, Colorado 80246–9060, or apply in person to the VHA Office of Community Care, 3773 Cherry Creek North Drive, Suite 470, Denver, Colorado 80209.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2021–01510 Filed 1–22–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to an existing System of Records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs is amending the system of records currently entitled ''Non-Health Data Analyses and Projections for VA Policy and Planning-VA (149VA008A)'' as set forth in the **Federal Register**. VA is amending this system notice serves to reflect amendments to the amendments to the Routine Uses of Records Maintained in the System, Safeguards, Retention and Disposal, and System Manager and Address as well as Notification Procedure. VA is republishing the system notice in its entirety.

DATES: This amended system of record will be effective February 24, 2021.

ADDRESSES: Written comments may be submitted by: Mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1068, Washington, DC 20420; fax to (202) 273–9026 or email to *http://www.Regulations.gov.* All copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (This is not a toll-free number) for an appointment.

FOR FURTHER INFORMATION CONTACT: Office of Enterprise Integration (OEI), Ryan J. Stiegman, Privacy Officer, U.S. Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420; telephone (202) 461–5800.

SUPPLEMENTARY INFORMATION: Non-Health Data Analyses and Projections for VA Policy and Planning-VA (149VA008A) have been amended to reflect new organizational names, new mail addresses, and updated point of contact information. Additionally, information technology guidance regarding storage and transmission has been updated. Also, Veteran Affairs has made minor edits to the System Notice to standardize language. Finally, an obsolete web address has been updated to a more complete description of the duties of the Office of Enterprise.

The Record Source Categories has been amended to identify the organizational name to the Office of Enterprise Integration that replaces the Office of Policy and Planning.

The Storage section has been amended to identify the organizational name to the Office of Enterprise Integration. Directive 6513 *Secure External Connections* has been added to clarify VA policy guidance. Finally, the Storage Section has been amended to reflect a change from ''VA's Austin Automation Center'' to ''VA's Austin Information Technology Center'' location.

The Policies and Practices for Retrievability of Records have been amended to identify the organizational name to the Office of Enterprise Integration.

The Policies and Practices for retention and disposal have been amended to identify the organizational name to the Office of Enterprise Integration.

The Physical, Procedural and Administrative Safeguard section has been amended to clarify that a panel of staff for data requests is fulfilled in a data review process. This section has also changed concurrence authority to the Executive Director level from the Assistant Secretary level. Finally, the Office of Policy and Planning has been replaced with the Office of Enterprise Integration.

The System Manager organizational title has been changed from the Assistant Secretary to the Executive Director (008B). The System Manager address has been amended from the Office of Policy and Planning to the successor organization of the Office of Enterprise Integration.

The Record Access section has been reformatted to VA standard and now includes two listed contacts for Veterans.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on April 15, 2020 for publication.

Dated: January 19, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

149VA008A

SYSTEM NAME:

''Non-Health Data Analyses and Projections for VA Policy and Planning-VA'' (149VA008A)

SYSTEM LOCATION:

Location for electronic records are placed in the Department of Veterans Affairs' (VA's) secured servers housed at VA's Austin Information Technology Center, 1615 Woodward St, Austin, TX 78772. Records necessary for a contractor to perform a VA-approved contract with VA are located at the respective contractor's facility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 527.

PURPOSE(S):

Non-health-related qualitative, quantitative, and actuarial analyses and projections to support policy analyses and recommendations to improve VA services for Veterans and their families. Analysis and review of policy and long-term planning issues affecting Veterans programs support legislative, regulatory and policy recommendations, decisions and initiatives. These activities are conducted for the Secretary, VA administrations and staff offices, special programs and projects within the Department (*e.g.,* special studies, advisory committees and task forces etc.), and entities external to VA, such as the Office of Management and Budget (OMB), and the United States (U.S.) Congress.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Service members and Veterans who have applied for any non-health-related benefits under 38 U.S.C.

2. Veterans' spouse, surviving spouse, previous spouse, children, and parents who have applied for any non-health-related benefit under 38 U.S.C.

3. Beneficiaries of other Federal agencies or other governmental entities.

4. Individuals who have applied for any non-health-related benefits under 38 U.S.C., but who do not meet the requirements under 38 U.S.C. to receive such benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include personal identifiers (*e.g.,* social security numbers and military service numbers etc.), residential and professional contact data (*e.g.,* address and telephone numbers etc.), population demographics (*e.g.,* gender and zip codes etc.), military service-related data (*e.g.,* branch of service and service dates etc.), financial-related data (*e.g.,* amount of historic benefit payments etc.), interment and burial benefit information, claims processing codes and information (*e.g.,* disability compensation and pension award codes etc.), and other VA and non-VA Federal information.

RECORD SOURCE CATEGORIES:

Information from the Office of Enterprise Integration is obtained from VA's benefits-related databases, DoD, Federal and State agencies, and other organizations whose data is necessary to accomplish the purpose for this system of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NOTE: To the extent that records contained in the system include individually-identifiable information protected by 38 U.S.C. 7332, that information cannot be disclosed under any of the following routine uses unless there is also specific disclosure authority in 38 U.S.C. 7332.

1. Breach investigation. Upon suspicion or confirmation of compromised data in its system of records, Office of Enterprise Integration (OEI) may disclose any system records to law enforcement and security entities, as necessary, for the investigations of any data security, identity theft, and fraud issues.

2. Congress. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. NARA & GSA. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under title 44, U.S.C.

4. Litigation. Any information in this system may be disclosed to the Department of Justice (DOJ), including U.S. Attorneys, upon its official request in order for VA to respond to pleadings, interrogatories, orders or inquiries from DOJ, and to supply DOJ with information to enable DOJ to represent the U.S. Government in any phase of litigation or in any case or controversy involving VA.

5. Research. Any system records may be disclosed to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and OEI has determined prior to the disclosure that OEI data handling requirements are satisfied. OEI may disclose limited individual identification information to another Federal agency for the purpose of matching and acquiring information held by that organization for OEI to use for the purposes stated for this system of records.

6. Contracts and Agreements. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

7. OMB. Any system records disclosure may be made to the OMB in order for them to perform their statutory responsibilities for evaluating Federal programs.

8. Outreach. Upon receipt of a written request, VA may disclose information to any state, tribe, county, or municipal agency for the purposes of outreach to a benefit under Title 38 Code of Federal Regulations (CFR).

9. Data breach response and remedial efforts. VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the

disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724.

10. Litigation. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

To determine whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update,'' currently posted at *http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf.*

11. Law Enforcement. VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

OEI's records are maintained electronically. Other electronic data is placed on VA's segregated servers which are housed at VA's Austin Information Technology Center, 615 Woodward St., Austin, TX 78772. All imported and exported OEI data is handled and housed via the provisions of signed data use agreements and VA data security policies, procedures, and directives. Requestors of OEI stored information within VA, or from external individuals, contractors, organizations, and/or agencies with whom VA has a contract or agreement, must provide an equivalent level of security protection and comply with current VA policies and procedures for storage and transmission as codified in VA directives such as but not limited to VA Handbook 6500 and Directive 6513.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

OEI's records may be retrieved by using an individual's social security number, military service number, VA claim or file number, non-VA Federal benefit identifiers, and other personal identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with 36 CFR 1234.34, *Destruction of Electronic Records,* ''electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules.'' This office's electronic files are destroyed or deleted when no longer needed for administrative, legal, audit, or other operational purposes in accordance with records disposition authority approved by the Archivist.

If the Archivist has not approved disposition authority for any records covered by the system notice, the system manager will take immediate action to have the disposition of records in the system reviewed and paperwork initiated to obtain an approved records disposition authority in accordance with *VA Handbook 6300.1, Records Management Procedures.* The records may not be destroyed until VA obtains an approved records disposition authority. OEI will publish an amendment to this notice upon issuance of a NARA-approved disposition authority.

PHYSICAL, PROCEDURAL AND ADMINISTRATIVE SAFEGUARDS:

All VA offices are protected from outside access by security personnel seven days a week. Entrances and exits are monitored by security cameras and protected by an alarm system. All VA staff and visitors are required to either have a VA-issued employment identification card or a temporary visitor identification badge. All work stations are secured during daytime and evening hours.

All data requests must be in writing, reviewed by a data review board, concurred on by the Executive Director for Data Governance and Analysis (DG&A) (008B), and released under the auspices of a signed data use agreement. File extracts provided for specific official uses will be limited to contain only the information fields needed for the analysis. Data used for analyses will have individual identifying characteristics removed or encrypted whenever possible. Unencrypted sensitive variables will only be used for analysis as a last resort.

Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Non-health information files containing unique identifiers such as social security numbers are encrypted to NIST-verified FIPS 140–2 standard or higher for storage, transport, or transmission. All files stored or transmitted on laptops, workstations, data storage devices and media are encrypted. Files are kept encrypted at all times except when data is in immediate use, per specifications by VA Office of Information and Technology. NIST publications were consulted in development of security for this system of records.

In the event of a contract or special project, VA may secure the services of contractors and/or subcontractors. In such cases, VA will maximize the use of encrypted data, when possible. Contractors and their subcontractors are required to maintain the same level of security as VA staff for non-health care information that has been disclosed to them. Unless explicitly authorized in writing by the VA, sensitive or protected data made available to the contractor and subcontractors shall not be divulged or made known in any manner to any person. All VA employees and contractors are mandated to complete annual cyber security and privacy training.

SYSTEM MANAGER(S) AND ADDRESS(ES):

OEI's System Manager is Kshemendra Paul, Executive Director, Office of

Enterprise Integration, Data Governance and Analytics (008B1), VA Central Office, 810 Vermont Ave. NW, Washington, DC 20420, 202–461–1052, *Kshemendra.Paul@va.gov.*

RECORD ACCESS PROCEDURE:

An individual (or duly authorized representative of such individual) who seeks access or wishes to contest records maintained under his or her name or other personal identifier may write or call the individuals listed under the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

A Veteran who wishes to determine whether a record is being maintained by the Office of Enterprise Integration under his or her name or other personal identifier or wishes to determine the contents of such records should submit a written request or apply in person to: (1) Privacy Officer, or the Executive Director, Office of Enterprise Integration, Data Governance and Analytics (008B1), VA Central Office, 810 Vermont Ave. NW, Washington, DC 20420. Inquiries need to include the individual's full name and social security number.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

[FR Doc. 2021–01528 Filed 1–22–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Personalized Career Planning and Guidance

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) announces its Educational and Career Counseling has been renamed Personalized Career Planning and Guidance (PCPG). The new name will enhance stakeholder recognition of counseling services provided under Chapter 36 and will support more effective program outreach and communication.

DATES: The changes were effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Greenlee, Chief, Personalized Career Planning and Guidance, Office of Transition and Economic Development, at 202–820–4051 or *TED.VBACO@va.gov.*

SUPPLEMENTARY INFORMATION: Effective October 1, 2020, VA changed the name of its Chapter 36 benefit provided under 38 U.S.C. 3697A from Educational and Career Counseling to PCPG. PCPG provides Service members, Veterans and eligible dependents with enhanced career counseling, assessments, education planning and guidance resources that are unique to the needs of each participant to set and achieve personal, career and education goals.

To enhance program awareness and utilization of counseling services provided under Chapter 36, the Veterans Benefits Administration (VBA) conducted human-centered design (HCD) research with Veterans and Service members to better understand their career and education needs and preferences related to the benefit. Through the HCD research, VBA identified program strengths, weaknesses, pain points and opportunities to better serve our eligible beneficiaries and better align Chapter 36 benefits with their values and ambitions.

The new name clarifies the type of benefits the program offers for eligible participants by emphasizing the right career and education counseling themes. This name change also is an important part of VBA's wider effort to support a more successful military-to-civilian transition. For more information about the PCPG program, please visit *https://benefits.va.gov/transition/economic-development-home.asp.*

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Assistant Secretary for Congressional and Legislative Affairs, Performing the Delegable Duties of the Chief of Staff, Department of Veterans Affairs, approved this document on January 8, 2021 for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2021–01435 Filed 1–22–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a Modified System of Records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled, ''Patient Advocate Tracking System (PATS)-VA'' (100VA10NS10) as set forth in the **Federal Register**. VA is amending the system of records by revising the System Name, System Number; System Location; System Manager; Record Source Categories; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Retention and Disposal of Records; and Physical, Administrative and Procedural Safeguards. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than February 24, 2021. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the new system will become effective February 24, 2021.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (Note: not a toll-free number). Comments should indicate they are submitted in response to ''Patient Representation Program Records-VA''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (Note: not a toll-free number). In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The System Name is being changed from ''Patient Advocate Tracking System (PATS)-VA'' to ''Patient Advocate Tracking System Replacement (PATS–R)-VA''.

The System Number will be changed from 100VA10NS10 to 100VA10H to reflect the current organizational alignment.

The System Location is being amended to replace the PATS application from being located at Falling Waters to Martinsburg, West Virginia. Being removed from this section is, ''A limited set of information is transferred from this central system in Falling Waters to Austin Automation Center. This limited set of information transferred to Austin Automation Center is utilized to run specific reports for central business office.'' Being added to the section is that PATS Report of Contact (ROC) encounter data, entered by Patient Advocate users of the application, resides in the centralized PATS database at Austin Information Technology Center (AITC). This ROC data is transferred nightly from the PATS database at AITC to the PATS Reports database at Hines Information Technology Center (HITC) to be utilized to run ROC issue activity and trending reports by Patient Advocates for submission to their VA Medical Center (VAMC)/Integrated Health Care System Director, Service Chiefs and Customer Care leaders to assess service activity and provide feedback to identify trends for process improvement and achieve best practices.

The System Manager is being amended to replace Director, National Veteran Service and Advocacy Program with Executive Director, VHA Office of Patient Advocacy.

The Records Source Categories is being amended to replace 24VA136 with 24VA10A7 and to will now include Veterans Health Information Systems and Technology Architecture (VistA) Records-VA (79VA10P2) and integrated systems.

The Routine Uses of Records Maintained in the System has been amended to change Joint Commission for Accreditation of Healthcare Organizations (JCAHO) to The Joint Commission (TJC) in Routine use #6.

Routine Use #18 has been amended by clarifying the language to state, ''VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

Routine Use #19 is being added to state, ''VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach. VA needs this routine use for the data breach response and remedial efforts with another Federal agency.''

New Routine Use #20 is being added to state, ''VA may disclose relevant information in response to an inquiry from a member of the general public or third party about the named individual.'' VA needs this routine use to permit disclosure to a Veteran when a complaint was submitted on his/her behalf or if a Congressional member submits the complaint but is not retrieved by his/her name or other unique identifier.

The Policies and Practices for Retention and Disposal of Records is being amended to replace Section XLV as authorized by the National Archives and Records Administration of the United States with Subject Identification Code (SIC) 1300.1, records are to be maintained for (7) years as authorized by the National Archives and Records Administration of the United States (N1–15–05–2, Item 1).

The Physical, Administrative and Procedural Safeguards is being amended to replace the PATS data center as being located in Falling Waters, WV, to being located in Martinsburg, West Virginia. Also, the Austin VA Data Processing Center is being replaced with the Austin Information Technology Center (AITC).

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on June 3, 2020 for publication.

Dated: January 19, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Patient Advocate Tracking System Replacement (PATS–R)-VA'' (100VA10H)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The PATS application is installed on a centrally located system in Martinsburg, West Virginia. The backup system in case of disaster recovery scenario is located at Hines Information Technology Center (HITC). The data entered into the application also resides on this central system. PATS Report of Contact (ROC) encounter data, entered by Patient Advocate users of the Application, resides in the centralized PATS database at Austin Information Technology Center (AITC).

Patient contacts, as recorded in ROCs, are coded using issue codes in order to facilitate tracking of these encounters to show where system improvements might be made. Aggregate data are maintained at the Network and Headquarters levels for the development of reports to make system wide changes. Records are collected and stored electronically for ease of retrieval by individual patient names and ease in compiling aggregate data. This ROC data is transferred nightly from the PATS database at AITC to the PATS Reports database at HITC to be utilized to run ROC issue activity and trending reports by Patient Advocates for submission to their VAMC/Integrated Health Care System Director, Service Chiefs and Customer Care leaders to assess service activity and provide feedback to identify trends for process improvement and achieve best practices.

SYSTEM MANAGER(S):

Official responsible for policies and procedures; Executive Director, VHA

Office of Patient Advocacy, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone number 202–461–7607 (this is not a toll-free number). Officials maintaining the system are the Director at the facility where the individual were associated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Chapter 73, section 7301(b).

PURPOSE(S) OF THE SYSTEM:

The records may be used for such purposes as producing various management and patient follow-up reports; responding to patient and other inquiries; conducting health care-related studies, statistical analysis, and resource allocation planning; providing clinical and administrative support to patient medical care; audits, reviews and investigations conducted by the staff of the health care facility, Veterans Integrated Service Network (VISN), VHA Headquarters, and VA's Office of Inspector General; law enforcement investigations; quality improvement reviews and investigations; personnel management and evaluation; employee ratings and performance evaluations; employee disciplinary or other adverse action, including discharge; advising health care professional licensing or monitoring bodies or similar entities or activities of VA and former VA health care personnel; accreditation of a facility by an entity such as the Joint Commission; and, notifying medical schools of medical students' performance. The information is integrated into the overall quality improvement plans and activities of the facility and used to improve services and communications, as well as, to track categories of complaints and the locations of complaints in order to improve the delivery of health care.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning individual patients, Veterans who have applied for care, their friends, their families, VA health care providers and members of the community. Members of the community include, but are not limited to, Congressional liaisons, Veterans Service Organizations and attorneys.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information maintained in paper records, and entered into a centralized web-based system, PATS, related to concerns and complaints regarding an individual's medical care, VA benefits, and/or encounters with health care facility personnel or other patients. The records include information that is compiled to review, investigate, and resolve these issues.

RECORD SOURCE CATEGORIES:

The patient, family members, and friends, employers or other third parties when otherwise unobtainable from the patient or family; employees, Patient Medical Records-VA (24VA10P2); Veterans Health Information Systems and Technology Architecture (VistA) Records-VA (79VA10P2); private medical facilities and health care professionals; State and local agencies; other Federal agencies; VISNs, Veterans Benefits Administration automated record systems including Veterans and Beneficiaries Identification and Records Location Subsystem-VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records-VA (58VA21/22); PATS Legacy; and various automated and/or integrated systems providing clinical and managerial support at VA health care facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of Title 44, Chapter 29 of the United States Code.

3. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation.

4. Disclosure may be made to any facility regarding the hiring, performance, or other personnel-related information with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement for purposes of establishing, maintaining, or expanding any such relationship.

5. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individual employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee boards or the appropriate nongovernment entities about the health care practices of employees who resigned, were terminated, or retired and whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

6. VA may disclose information for program review purposes and the seeking of accreditation and/or certification to survey teams of The Joint Commission (TJC), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with which VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

7. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of

licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

8. Disclosure of information to the Federal Labor Relations Authority, including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

11. Disclosure may be made to a Federal, State or local agency maintaining civil, criminal or other relevant information such as current licenses, if necessary to obtain information relevant to any agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other health, educational or welfare benefit.

12. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

13. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be disclosed under certain circumstances to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public's health or safety, if a qualified representative of such organization, agency or instrumentality has made a standing written request that such name(s) or address(es) be provided for a purpose authorized by law; provided that the record(s) will not be used for any purpose other than that stated in the request and that organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

14. VA may disclose any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

15. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions of the Commission as authorized by law or regulation.

16. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205–1206, or as may be authorized by law.

17. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

18. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

19. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

20. VA may disclose relevant information in response to an inquiry from a member of the general public or third party about the named individual.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper, microfilm, magnetic tape, disk, or laser optical media. In most cases, copies of back-up computer files are maintained at off-site locations.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, social security number or other assigned identifiers of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with Records Control Schedule 10–1, Subject Identification Code (SIC) 1300.1, and are to be maintained for (7) years as authorized by the National Archives and Records Administration of the United States (N1–15–05–2, Item 1).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to VA working and storage areas are restricted to VA employees on

a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. PATS is a web-based application installed on central computer systems in a data center at Martinsburg, West Virginia. The systems are maintained by authorized personnel. The end users access the application using the Web browser installed on their desktops. Additionally, access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated Data Processing (ADP) peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in VistA may be accessed by authorized VA employees. Access to PATS application and data in the application is controlled at two levels; the systems recognize authorized employees by series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the application which is needed in the performance of their official duties. Information that is downloaded from PATS and maintained on personal computers are afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

3. Access to the AITC is generally restricted to Center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, Information Systems Centers, VA Central Office, and Veteran Integrated Service Networks. Access is controlled by individually unique passwords/codes which must be changed periodically by the employee.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they are or were employed or made contact.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they are or were employed or made or have contact. Inquiries should include the person's full name, social security number, dates of employment, date(s) of contact, and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 74 FR 26766 dated June 3, 2009.

[FR Doc. 2021–01501 Filed 1–22–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Systems of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs is amending the system of records currently entitled ''Veterans, Dependents of Veterans, and VA Beneficiary Survey Records (43VA008)'' as set forth in the **Federal Register**. VA is amending the System Manager, Notification Procedure, organizational information, updating existing Routine Uses to use VA standard language and adding Handbook for Secure Connections 6513. VA is republishing the system notice in its entirety.

DATES: This amended system of record will be effective February 24, 2021.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted by: Mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; fax to (202) 273–9026; or email to *http://www.Regulations.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

FOR FURTHER INFORMATION CONTACT: Office of Enterprise Integration (OEI), Privacy Officer, U.S. Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420; telephone (202) 461–5800.

SUPPLEMENTARY INFORMATION: In the Routine Use Section existing language has been updated using approved VA language. No new routine uses have been added. Update included disaggregating previous Routine Use Four (4) for research and separating out the provision for matching with other federal agencies. This federal matching provision is Routine Use Number Five (5). Other Routine Uses have been renumbered.

In the System Location Section, the office has been amended from the Data Development and Analysis Service to the Office of Data Governance and Analysis, (008B1). To incorporate other organizational changes the System Manager has been changed to the Executive Director for Data Governance and Analysis. Also, the name of the Austin storage location has changed from Austin Automation Center to Austin Information Technology Center. Finally, the last sentence in the System Location Section has been amended for clarity to ''records necessary for a contractor to perform under a VA-approved contract are located at the respective contractor's facility.''

In the Authority for Maintenance of the System Section, Public Law 108—454 of 2004 has been removed. This Public Law authorized survey research for reporting requirements in Sections 211 and 805 that have expired.

In the Record Source Categories, language has been updated to include Centers for Medicare and Medicaid Services (CMS) to the list of entities from which information may be obtained.

The Policies and Practices for Storage have been amended to include the complete name and address of the OEI server location to be used for data storage at the VA Austin Information Technology Center, 615 Woodward St., Austin, TX 78772. Further, VA has replaced rescinded Directive 6504 with its replacements, *VA Handbook 6500, Information Security Program,* and added *Handbook 6513 Secure Connections.*

In paragraph One (1) of the Physical, Procedural and Administrative Safeguards Section, the Health Insurance Portability and

Accountability Act has been clarified. In the paragraph Two (2) a VA organizational change edit was made to the Office of Operations, Security, and Preparedness and this paragraph was updated to reflect the current practice of storing data in a protected server environment.

In the Safeguards Section language has been updated. In paragraph Four (4) Directive 6504 has been replaced with *VA Handbook 6500, Information Security Program* to update and clarify security policy. Data handling to include both health and non-health data has been clarified.

The Safeguards section has included additional updates. Specifically, in the Safeguards Section Paragraph Five (5) Memorandum of Understanding (MOU) has been added to the possible agreements' types used to protect information. In addition, in Safeguards Section Paragraph Seven (7) update has been made to clarify and update the practice of using secure servers for data handling and analysis. Finally, in Section (8) language is updated and clarified to address access to record level files and related statistical software code as underlying survey data and resources.

In the System Manager(s) and Address(es) and Notification Procedure Sections, the office name has been amended from the Office of Policy and Planning, to the successor organization named the Office of Enterprise Integration (008). Titles of responsible System Notice officials in the new organization have been updated. Additionally, minor edits have been made to the System Notice for clarity, grammar, punctuation, and style. These changes are not substantive, and consequently, are not further discussed or enumerated.

The Report of Intent to Amend a System of Records Notice and an advance copy of the System Notice have been sent to the appropriate congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on April 30, 2020 for publication.

Dated: January 19, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

43VA008

SYSTEM NAME:

Veterans, Dependents of Veterans, and VA Beneficiary Survey Records—VA.

SYSTEM LOCATION:

Location for electronic records are stored on the Department of Veterans Affairs' secured servers housed at VA's Austin Information Technology Center, 1615 Woodward St., Austin, TX 78772. Records necessary for a contractor to perform under a VA-approved contract are located at the respective contractor's facility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 306, 38 U.S.C. 527.

PURPOSE(S):

The purpose of this system of records is to collect data about the characteristics of America's Veteran, Servicemember, family member, and beneficiary populations through surveys that may be augmented with information from several existing VA systems of records and with information from non-VA sources to:

1. Conduct statistical studies and analyses relevant to VA programs and services;
2. Plan and improve services provided;
3. Decide about VA policies, programs, and services;
4. Study the VA's role in the use of VA and non-VA benefits and services; and
5. Study the relationship between the use of VA benefits and services and the use of related benefits and services from non-VA sources. These types of studies are needed for VA to forecast future demand for VA benefits and services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Veterans,
(2) Family members of Veterans,
(3) Military Servicemembers,
(4) Family members of Servicemembers, and
(5) Other VA beneficiaries.

RECORD SOURCE CATEGORIES:

The categories of records in the system may include:

1. Personal identifiers (*e.g.,* respondents' names, addresses, phone numbers, social security numbers, employer identification numbers);
2. Demographic and socioeconomic characteristics (*e.g.,* date of birth, sex, race/ethnicity, education, marital status, employment and earnings, financial information, business ownership information);
3. Military service information (*e.g.,* military occupational specialties, periods of active duty, branch of service including National Guard or Reserves, date of separation, rank);
4. Health status information (*e.g.,* diagnostic, health care utilization, cost, and third-party health plan information);
5. Benefit and service information (*e.g.,* data on transition assistance services, VA medical and other benefit eligibility, awareness, knowledge, understanding, and use; data on access and barriers to VA benefits or services; data about satisfaction with VA outreach, benefits, or services);
6. The records may also include information about Department of Defense (DoD) military personnel from DoD files (*e.g.,* utilization files that contain inpatient and outpatient medical records, and eligibility files from the Defense Eligibility Enrollment Reporting System (DEERS));
7. The records may include information on Medicare beneficiaries from Centers for Medicare and Medicaid Services (CMS), and its predecessor, the Health Care Financing Administration (HCFA), that are contained in databases (*e.g.,* Denominator file identifies the population being studied; Standard Analytical files on inpatient, outpatient, physician supplier, nursing home, hospice, home care, durable medical equipment; and Group and other Health Plans).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To the extent that records contained in the system include information protected by Title 45, Code of Federal Regulations (CFR), Parts 160 and 164 (*i.e.,* individually identifiable health information), and 38 U.S.C. 7332 (*i.e.,* medical treatment information related to drug abuse, alcoholism, or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure).

1. NARA & GSA. VA may disclose information from this system to the National Archives and Records

Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under title 44, U.S.C.

2. Contractors. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

3. Law Enforcement. VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

4. Research. VA may disclose information from this system to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and VA has determined prior to the disclosure that VA data handling requirements are satisfied.

5. Federal Agencies for Computer Matches. VA may disclose limited individual identification information to another Federal agency from this system for the purpose of matching and acquiring information held by that agency for VA to use for the purposes stated for this system of records.

6. Congress. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

7. Litigation. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

To determine whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update,'' currently posted at *http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf.*

8. Data breach response and remedial efforts. VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

VA sensitive information that includes health information is stored on a segregated secure server. For data match purposes and data storage, all databases are placed on secured servers located at the following location: VA's Austin Information Technology Center, 615 Woodward St., Austin, TX 78772. Information that resides on a segregated server is kept inside a restricted network area behind cipher-locked doors with limited access. Requestors of stored health and non-health information within VA, or from external individuals, contractors, organizations, and/or agencies with whom VA has a contract or agreement, must provide an equivalent level of security protection and comply with current VA policies and procedures for storage and transmission as codified in VA directives such as but not limited to *VA Handbook 6500, Information Security Program and Handbook 6513 Secured Connections.*

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Health care information is kept separate from individual identifiers for survey data. Unique codes are assigned to individual health information. A codebook for decoding is stored on a secure server for name, social security number or other assigned identifiers of the individuals on whom they are maintained. These survey records may be retrieved by name, address, social security number, date of birth, military service number, claim or file number, DoD identification numbers, or other personal identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States and the National Archives and Records Administration (NARA) and published in Agency Records Control Schedules. If the Archivist has not approved disposition authority for any records covered by the system notice, the System Manager will take immediate action to have the disposition of records in the system reviewed in accordance *with VA Handbook 6300.1, Records Management Procedures.* The records may not be destroyed until VA obtains an approved records disposition authority. See Records Control Schedule (RCS) 10–1 May 2016 for further detailed guidance. OEI destroys electronic files when no longer needed for administrative, legal, audit, or other operational purposes consistent with the Record Control Schedule. In accordance with 36 CFR 1234.34, *Destruction of Electronic Records,* ''electronic records may be destroyed

only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules.''

PHYSICAL, PROCEDURAL AND ADMINISTRATIVE SAFEGUARDS:

1. This list of safeguards furnished in this System of Record is not an exclusive list of measures that have been, or will be taken to protect individually-identifiable information. The Health Insurance Portability and Accountability Act (HIPAA) provides guidelines for protecting health information that will be followed by adopting health care industry best practices and the reporting of breaches in order to provide adequate safeguards. Further, VA policy directives that specify the standards that will be applied to protect health information will be reviewed by VA staff and contractors through mandatory data privacy and security training.

2. Access to data servers and storage areas is restricted to authorized VA employee or contract staffs who are cleared to work by the Office of Operations, Security, and Preparedness. Access to the OEI data servers used for storage is restricted and protected by access codes. Health information file areas are locked after normal duty hours. VA facilities are protected from outside access by the Federal Protective Service and/or other security personnel.

3. Access to health information provided by the Veterans Health Administration (VHA) pursuant to a Business Associate Agreement (BAA) is restricted to those OEI employees and contractors who have a business need for the information in the performance of their official duties. As a general rule, full sets of health care information are not provided for use unless authorized by the System Manager. File extracts provided for specific official uses will be limited to contain only the information fields needed for the analysis. Data used for analyses will have individual identifying characteristics removed whenever possible.

4. Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Health and non-health information files containing unique identifiers such as social security numbers are encrypted to NIST-verified FIPS 140–2 standard or higher for storage, transport, or transmission. Any health information files transmitted on laptops, workstations, data storage devices or media are encrypted. Record level files are kept encrypted at all times except when data is in immediate use. These methods are applied in accordance with HIPAA regulations [45 CFR 164.514] and *VA Handbook 6500, Information Security Handbook.*

5. Contractors and their subcontractors are required to maintain the same level of security as VA staff for health care information that has been disclosed to them. Any data disclosed to a contractor, or use of a subcontractor to perform authorized analyses, requires use of Data Use Agreements (DUAs) or Memorandum of Understanding (MOU), Non-Disclosure Statements and Business Associates Agreement (BAA) to protect health information. Unless explicitly authorized in writing by the VA, sensitive or protected data made available to the contractor and subcontractors shall not be divulged or made known in any manner to any person. Other Federal or state agencies requesting health care information need to provide agreements to protect data.

6. The OEI work area is accessed for business-only needs. A limited amount of data is stored in a combination-protected safe which is secured inside a limited access room. Direct access to the safe is controlled by select individuals who possess background security clearances. Only a few employees with strict business needs or ''need-to-know'' access and completed background checks will ever handle the data once it is removed from the safe for data match purposes.

7. Data matches, analysis, and storage are conducted primarily on secured servers located in Austin, TX, which are housed in a restricted access network area with appropriate locking devices. Access to such records are controlled by three measures: The application of a VA security identification card coded with special permissions network area's key pad; the proper input of a series of individually-unique passwords/codes by a recognized user; and the entrance of those select individuals for the performance of their official information technology-related duties.

8. Access to Automated Data Processing (ADP) files, record level files and related statistical software code is controlled by using an individually-unique pin number or password entered in combination with a Personally Identifiable Variable (PIV) card or other information.

9. Access to VA facilities where identification codes, passwords, security profiles and information on possible security violations are maintained is controlled at all hours by the Federal Protective Service, VA, or other security personnel and security access control devices.

10. Public use files prepared for purposes of research and analysis are purged of personal identifiers.

11. Paper records, when they exist, are maintained in a locked room at the Washington National Records Center or at designated locations identified in this System Notice. The Federal Protective Service protects paper records from unauthorized access.

SYSTEM MANAGER(S) AND ADDRESS(ES):

OEI's System Manager is Kshemendra Paul, Executive Director, Office of Enterprise Integration, Data Governance and Analytics (008B1), VA Central Office, 810 Vermont Ave. NW, Washington, DC 20420, 202–461–1052, *Kshemendra.Paul@va.gov.*

RECORD ACCESS PROCEDURE:

An individual who wants to determine whether the Director, National Center for Veterans Analysis and Statistics (008B1) is maintaining a record under the individual's name or other personal identifier, or wants to determine the content of such records must submit a written request to the Director, National Center for Veterans Analysis and Statistics, Office of Enterprise Integration, (008B1), VA Central Office, 810 Vermont Ave. NW, Washington, DC 20420. The individual seeking this information must prove his or her identity and provide the name of the survey in question, approximate date of the survey, social security number, full name, and date of birth, telephone number, and return address. All inquiries must reasonably identify the health care information involved and the approximate date that medical care was provided.

CONTESTING RECORD PROCEDURES:

(See Records Access Procedures.)

NOTIFICATION PROCEDURE:

A Veteran who wishes to determine whether a record is being maintained by the Office of Enterprise Integration under his or her name or other personal identifier or wishes to determine the contents of such records should submit a written request or apply in person to: (1) Executive Director, Office of Enterprise Integration, (008B), VA Central Office, 810 Vermont Ave. NW, Washington, DC 20420. (2) Director, National Center for Veterans Analysis and Statistics, Office of Enterprise Integration, (008B1), VA Central Office, 810 Vermont Ave. NW, Washington, DC 20420. Inquiries should include the individual's full name and social security number.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

[FR Doc. 2021–01526 Filed 1–22–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a Modified System of Records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled, ''The Revenue Program-Billing and Collections Records-VA'' (114VA10D). VA is amending the system of records by revising the System Number; System Location; Purpose of the System; Categories of Individuals Covered by the System; Record Source Categories; Routine Uses of Records Maintained in the System; Policies and Practices for Storage of Records; and Physical, Procedural and Administrative Safeguards. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than February 24, 2021. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the new system will become effective February 24, 2021.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (Note: not a toll-free number). Comments should indicate they are submitted in response to ''The Revenue Program-Billing and Collections Records-VA''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (Note: not a toll-free number). In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492 (Note: not a toll-free number).

SUPPLEMENTARY INFORMATION: The System Number is being updated from 114VA10D to 114VA10 to reflect the current VHA organizational routing symbol.

The System Location is being updated to reflect electronic records being located at contractor facilities, such as the Cerner Technology Centers (CTC): Primary Data Center in Kansas City, MO, and Continuity of Operations/Disaster Recovery (COOP/DR) Data Center in Lees Summit, MO. Amazon Web Services, LLC, 13461 Sunrise Valley Drive, Herndon, VA 20171–3283.

The Purpose of the System is being amended to remove participation in pilot test of NPI enumeration system by the Centers for Medicare and Medicaid Services (CMS). This section will add, CMS National Plan and Provider Enumeration System (NPPES).

Categories of Individuals Covered by the System is being amended to add ''including those receiving or eligible to receive VA health care'' to item 2. Also, item 10, Caregivers, is being added.

The Record Source Categories is being amended to add Social Security Administration and Patient Medical Records-VA (24VA10A7). Also, 77VA10A4 is being changed to 77VA10E2E and 79VA10P2 is being changed to 79VA10A7.

The Routine Uses of Records Maintained in the System is amending Routine Use 10 to remove universal personal identification number.

Routine Use 13 is being amended to include 7332-protected information.

Routine Use 17 is being amended to replace ''CMS to test the enumeration system for the NPI and once the system is operational'' with National Plan and Provider Enumeration System (NPPES).

Routine Use 20 has been amended by removing the language which states, this routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

a. Effective Response. A Federal agency's ability to respond quickly and effectively in the event of a breach of Federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

b. *Disclosure of Information.* Often, the information to be disclosed to such persons and entities is maintained by Federal agencies and is subject to the Privacy Act (5 U.S.C 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

The language in Routine Use 21 is being amended. It previously stated that disclosure of the records to the Department of Justice (DoJ) is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

Policies and Practices for Storage of Records is being amended to include Records within this system is also hosted in Amazon Web Services (AWS) Government Cloud (GovCloud) infrastructure as a service cloud-computing environment that has been authorized at the high-impact level under the Federal Risk and Authorization Management Program (FedRAMP).

The Physical, Procedural and Administrative Safeguards section is being amended to add, ''Access to Cerner Technology Centers is generally restricted to Cerner employees, contractors or associates with a Cerner issued ID badge and other security

personnel cleared for access to the data center. Access to computer rooms housing Federal data, hence Federal enclave, is restricted to persons Federally cleared for Federal enclave access through electronic badge entry devices. All other persons, such as custodians, gaining access to Federal enclave are escorted.''

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on July 24, 2020 for publication.

Dated: January 19, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME:

The Revenue Program-Billing and Collections Records-VA (114VA10)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at each Department of Veterans Affairs (VA) health care facility. In most cases, backup computer tape information is stored at off-site locations. Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. In addition, information from these records or copies of records may be maintained at, 810 Vermont Avenue NW, Washington, DC; the VA Austin Automation Center (AAC), Austin, Texas; Veterans Integrated Service Network (VISN) Offices; VA Allocation Resource Center (ARC), Boston, Massachusetts; and contractor facilities, such as the Cerner Technology Centers (CTC); Primary Data Center in Kansas City, Missouri; and Continuity of Operations/Disaster Recovery (COOP/DR) Data Center in Lees Summit, Missouri. Records are also maintained at Amazon Web Services, LLC, 13461 Sunrise Valley Drive, Herndon, VA 20171–3283.

SYSTEM MANAGER(S):

The official responsible for policies and procedures is the Deputy Under Secretary for Health, Office for Community Care (10D), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. The local officials responsible for maintaining the system are the Director of the facility where the individual is or was associated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.), sections 1710 and 1729.

PURPOSE(S) OF THE SYSTEM:

The records and information are used for the billing of, and collections from a third-party payer, including insurance companies, other Federal agencies, or foreign governments, for medical care or services received by a Veteran for a non-service-connected condition or from a first party Veteran required to make copayments. The records and information are also used for the billing of and collections from other Federal agencies for medical care or services received by an eligible beneficiary. The data may be used to identify and/or verify insurance coverage of a Veteran or Veteran's spouse prior to submitting claims for medical care or services. The data may be used to support appeals for non-reimbursement of claims for medical care or services provided to a Veteran. Data may be used in the Payer Compliance Tool to determine if third party payer information meets the requirement to reimburse VA. The data may be used to enroll health care providers with health plans and VA's health care clearinghouse in order to electronically file third party claims. For the purposes of health care billing and payment activities to and from third party payers, VA will disclose information in accordance with the legislatively-mandated transaction standard and code sets promulgated by the United States Department of Health and Human Services (HHS) under the Health Insurance Portability and Accountability Act (HIPAA). The data may be used to make application for a National Provider Identifier (NPI), as required by the HIPAA Administrative Simplification Rule on Standard Unique Health Identifier for Healthcare Providers, 45 CFR part 162, for all health care professionals providing examination or treatment within VA health care facilities, including the Centers for Medicare and Medicaid Services (CMS) National Plan and Provider Enumeration System (NPPES). The records and information may be used for statistical analyses to produce various management, tracking and follow-up reports, to track and trend the reimbursement practices of insurance carriers, and to track billing and collection information. The data may be used to support, or in anticipation of supporting, reimbursement claims from community health care providers or their agents. The data may be used to support, or in anticipation of supporting, reimbursement claims from academic affiliates with which VA maintains a business relationship.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans who have applied for health care services under Title 38, United States Code, Chapter 17, and in certain cases members of their immediate families.
2. Beneficiaries of other Federal agencies, including those receiving or eligible to receive VA health care.
3. Individuals examined or treated under contract or resource sharing agreements.
4. Individuals examined or treated for research or donor purposes.
5. Individuals who have applied for Title 38 benefits, but who do not meet the requirements under Title 38 to receive such benefits.
6. Individuals who were provided medical care under emergency conditions for humanitarian reasons.
7. Pensioned members of allied forces (Allied Beneficiaries) who are provided health care services under Title 38, United States Code, Chapter 1.
8. Health care professionals providing examination or treatment to any individuals within VA health care facilities.
9. Health care professionals providing examination or treatment to individuals under contract or resource sharing agreements or Community Care programs, such as Choice.
10. Caregivers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. The Social Security number and insurance policy number of the Veteran and/or Veteran's spouse. The record may include other identifying information (*e.g.,* name, date of birth, age, sex, marital status) and address information (*e.g.,* home and/or mailing address, home telephone number).
2. Insurance company information specific to coverage of the Veteran and/

or spouse to include annual deductibles and benefits.

3. Diagnostic codes (ICD–10–CM, CPT– 4, and any other coding system) pertaining to the individual's medical, surgical, psychiatric, dental and/or psychological examination or treatment.

4. Charges claimed to a third-party payer, including insurance companies, other Federal agencies, or foreign governments, based on treatment/services provided to the patient.

5. Charges billed to those Veterans who are required to meet co-payment obligations for treatment/services rendered by VA.

6. The name, Social Security number, Drug Enforcement Administration (DEA) number, National Provider Identifier (NPI) and credentials including provider's degree, licensure, certification, registration or occupation of health care providers.

7. Records of charges related to patient care that are created in anticipation of litigation in which the United States is a party or has an interest in the litigation or potential litigation, including a third-party tortfeasor, workers compensation, or no-fault automobile insurance cases. Such records are not subject to disclosure under 5 U.S.C. 552a(d)(5).

RECORD SOURCE CATEGORIES:

The patient, family members or guardian, and friends, employers or other third parties when otherwise unobtainable from the patient or family; health insurance carriers; private medical facilities and health care professionals; state and local agencies; other Federal agencies; Social Security Administration; VA regional offices; Veterans Benefits Administration automated record systems, including Veterans and Beneficiaries Identification and Records Location Subsystem-VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records-VA (58VA21/22/28); and various automated systems providing clinical and facilities to include Health Care Provider Credentialing and Privileging Records-VA (77VA10E2E); Veterans Health Information Systems and Technology Architecture (VistA)-VA (79VA10A7) and Patient Medical Records-VA (24VA10A7).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually-identifiable health information, and 38 U.S.C. 7332; *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. VA may disclose information, except for the names and home address of Veterans and their dependents, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. Disclosure may be made to an agency in the executive, legislative, or judicial branch, or the District of Columbia government in response to its request or at the initiation of VA, in connection with the letting of a contract, other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision. However, names and addresses of Veterans and their dependents will be released only to Federal entities.

3. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

4. Disclosure may be made to National Archives and Records Administration in records management inspections conducted under authority of Title 44 U.S.C.

5. Disclosure may be made to the Department of Justice and United States attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

6. Any information in this system of records, including personal information obtained from other Federal agencies through computer-matching programs, may be disclosed for the purposes identified below to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by VA. Information may be disclosed under this routine use only to the extent that it is reasonably necessary for the following purposes: (a) To assist VA in collection of Title 38 overpayments, overdue indebtedness, and/or costs of services provided individuals not entitled to such services; and (b) to initiate civil or criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtain Title 38 benefits without entitlement. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

7. The name and address of a Veteran, other information as is reasonably necessary to identify such Veteran, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the Veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

8. The name of a Veteran, or other beneficiary, other information as is reasonably necessary to identify such individual, and any information concerning the individual's indebtedness by virtue of a person's participation in a medical care and treatment program administered by VA, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of indebtedness arising from such program by the withholding of all or a portion of the person's Federal income tax refund. These records may be disclosed as part of a computer-matching program to accomplish these purposes.

9. Relevant information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to HHS for the purpose of identifying improper duplicate payments made by Medicare fiscal intermediaries where VA was authorized and was responsible for payment for medical services obtained at community health care facilities.

10. The Social Security number, NPI, credentials, and other identifying information of a health care provider may be disclosed to a third party where

the third party requires the Department provide that information before it will pay for medical care provided by VA.

11. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor and/or subcontractor to perform the services of the contract or agreement.

12. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (b) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician, dentist or other licensed health care practitioner for a period longer than 30 days; or (c) the acceptance of the surrender of clinical privileges, or any restriction of such privileges by a physician, dentist, or other licensed health care practitioner either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

13. Relevant information, including 7332-protected information, may be disclosed from this system of records to any third party or Federal agency such as the Department of Defense, Office of Personnel Management, HHS and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

14. Relevant information, including the nature and amount of a financial obligation, may be disclosed in order to assist VA in the collection of unpaid financial obligations owed VA, to a debtor's employing agency or commanding officer, so that the debtor employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514, 4 CFR 102.5, and section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469).

15. Identifying information such as name, address, Social Security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/re-privileging of health care practitioners, and at other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention or termination of the applicant or employee.

16. Disclosure of individually identifiable health information including billing information for the payment of care may be made by appropriate VA personnel, to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices, to family members and/or the person(s) with whom the patient has a meaningful relationship.

17. Provider identifying information may be disclosed from this system of records to the NPPES, to obtain an NPI for any eligible health care professional providing examination or treatment with VA health care facilities.

18. Relevant information may be disclosed to community health care providers or their agents where the community health care provider provides health care treatment to Veterans and requires the Department provide that information in order for that entity or its agent to submit, or in anticipation of submission of, a health care reimbursement claim or, in the case of the NPI, for permissible purposes specified in the HIPAA legislation (45 CFR part 162).

19. Relevant information may be disclosed to an academic affiliate with which VA maintains a business relationship, where the VA provider also maintains an appointment to that academic affiliate's medical staff. This disclosure is to support, or in anticipation of supporting, a health care reimbursement claim(s) or, in the case of the NPI, for permissible purposes specified in the HIPAA legislation (45 CFR part 162).

20. VA may disclose any information or records to appropriate agencies, entities, and persons when: (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

21. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

22. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

23. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

24. VA may disclose relevant information to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and courts, boards, or commissions, to the extent necessary to aid VA in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

25. VA may disclose relevant information to health plans, quality

review and/or peer review organizations in connection with the audit of claims or other review activities to determine quality of care or compliance with professionally accepted claims processing standards.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper or electronic media. Records within this system is also hosted in Amazon Web Services (AWS) Government Cloud (GovCloud) infrastructure as a service cloud-computing environment that has been authorized at the high-impact level under the Federal Risk and Authorization Management Program (FedRAMP).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, Social Security number or other assigned identifier of the individuals on whom they are maintained, or by specific bill number assigned to the claim of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Follow the requirement of RCS 10–1 Chapter 4 Item 4000.1 a & b. 4000.1 Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting.

a. Official record held in the office of record.

Temporary; destroy six (6) years after final payment or cancellation, but longer retention is authorized if required for business use. (GRS 1.1, Item 010) (DAA–GRS–2016–0001–0002)

b. All Other copies

Temporary; destroy or delete when six (6) years old, but longer retention is authorized if required for business use. (GRS 1.1 item 013) (DAA–GRS–2016–0001–0002)

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Information in VistA may only be accessed by authorized VA personnel. Access to file information is controlled at two levels. The systems recognize authorized personnel by series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that information in the file, which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes. Access by Office of Inspector General (OIG) staff conducting an audit, investigation, or inspection at the health care facility, or an OIG office location remote from the health care facility, is controlled in the same manner.

3. Information downloaded from VistA and maintained by the OIG headquarters and Field Offices on automated storage media is secured in storage areas for facilities to which only OIG staff have access. Paper documents are similarly secured. Access to paper documents and information on automated storage media is limited to OIG employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes.

4. Access to the VA Austin Information Technology Center (AITC) is generally restricted to AITC employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the AITC databases may be accessed.

5. Access to records maintained at the VA Allocation Resource Center and the VISN Offices is restricted to VA employees who have a need for the information in the performance of their official duties. Access to information stored in electronic format is controlled by individually unique passwords/codes. Records are maintained in manned rooms during working hours. The facilities are protected from outside access during non-working hours by the Federal Protective Service or other security personnel.

6. Access to Cerner Technology Centers is generally restricted to Cerner employees, contractors or associates with a Cerner issued ID badge and other security personnel cleared for access to the data center. Access to computer rooms housing Federal data, hence Federal enclave, is restricted to persons Federally cleared for Federal enclave access through electronic badge entry devices. All other persons, such as custodians, gaining access to Federal enclave are escorted.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they were treated.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA health care facility where care was rendered. Addresses of VA health care facilities may be found in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. All inquiries must reasonably identify the place and approximate date that medical care was provided. Inquiries should include the patient's full name, Social Security number, insurance company information, policyholder and policy identification number as well as a return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 83 FR 11303.

[FR Doc. 2021–01541 Filed 1–22–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 86 Monday,

No. 14 January 25, 2021

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 10140 of January 20, 2021

A National Day of Unity

By the President of the United States of America

A Proclamation

I am humbled before God and my fellow Americans to take the sacred oath of President of our beloved country.

Today, we celebrate the triumph of democracy after an election that saw more Americans voting than ever before in our Nation's history, and where the will of the people has been heard and heeded.

We do so at a moment of great peril and promise for our Nation. A once-in-a-century deadly pandemic. A historic and deepening economic crisis. Calls for racial justice some 400 years in the making. A climate crisis with force and fury. We also feel the rise in political extremism and domestic terrorism—unleashed just days ago on our Capitol, the citadel of freedom, but brewing long before—that we must confront and defeat.

Yet in this dire moment, democracy prevailed. On this day, we set our sights on the Nation we know we can and must be. I am honored to do so alongside Vice President Kamala Harris, the first woman who has taken the oath to serve in elected national office, and who will not be the last. Together, we know that to overcome the challenges before all of us, to restore the soul of America, requires the beating heart of a democracy: Unity.

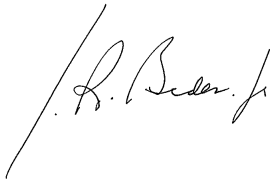
With unity, we can save lives and beat this pandemic. We can build our economy back better and include everyone. We can right wrongs and root out systemic racism in our country. We can confront the climate crisis with American jobs and ingenuity. We can protect our democracy by seeing each other not as adversaries but as fellow Americans. For the world to see, with unity we can lead not just by the example of our power, but by the power of our example.

As we start the hard work to be done, I pray this moment gives us the strength to rebuild this house of ours upon a rock that can never be washed away. And, as in the Prayer of St. Francis, for where there is discord, union; where there is doubt, faith, where there is darkness, light.

On this Inauguration Day I swear an oath to be a President for all Americans and ask every American to join me in this cause of democracy. May this be the story that unites us as fellow Americans and as the United States of America.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 20, 2021, a National Day of Unity and call upon the people of our Nation to join together and write the next story of our democracy—an American story of decency and dignity, of love and of healing, and of greatness and of goodness.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2021–01748
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Proclamation 10141 of January 20, 2021

Ending Discriminatory Bans on Entry to the United States

By the President of the United States of America

A Proclamation

The United States was built on a foundation of religious freedom and tolerance, a principle enshrined in the United States Constitution. Nevertheless, the previous administration enacted a number of Executive Orders and Presidential Proclamations that prevented certain individuals from entering the United States—first from primarily Muslim countries, and later, from largely African countries. Those actions are a stain on our national conscience and are inconsistent with our long history of welcoming people of all faiths and no faith at all.

Beyond contravening our values, these Executive Orders and Proclamations have undermined our national security. They have jeopardized our global network of alliances and partnerships and are a moral blight that has dulled the power of our example the world over. And they have separated loved ones, inflicting pain that will ripple for years to come. They are just plain wrong.

Make no mistake, where there are threats to our Nation, we will address them. Where there are opportunities to strengthen information-sharing with partners, we will pursue them. And when visa applicants request entry to the United States, we will apply a rigorous, individualized vetting system. But we will not turn our backs on our values with discriminatory bans on entry into the United States.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(f) and 1185(a), hereby find that it is in the interests of the United States to revoke Executive Order 13780 of March 6, 2017 (Protecting the Nation From Foreign Terrorist Entry Into the United States), Proclamation 9645 of September 24, 2017 (Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats), Proclamation 9723 of April 10, 2018 (Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats), and Proclamation 9983 of January 31, 2020 (Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats). Our national security will be enhanced by revoking the Executive Order and Proclamations.

Accordingly, I hereby proclaim:

Section 1. *Revocations.* Executive Order 13780, and Proclamations 9645, 9723, and 9983 are hereby revoked.

Sec. 2. *Resumption of Visa Processing and Clearing the Backlog of Cases in Waiver Processing.* (a) The Secretary of State shall direct all Embassies and Consulates, consistent with applicable law and visa processing procedures, including any related to coronavirus disease 2019 (COVID–19), to resume visa processing in a manner consistent with the revocation of the

Executive Order and Proclamations specified in section 1 of this proclamation.

(b) Within 45 days of the date of this proclamation, the Secretary of State shall provide to the President a report that includes the following elements:

(i) The number of visa applicants who were being considered for a waiver of restrictions under Proclamation 9645 or 9983 on the date of this proclamation and a plan for expeditiously adjudicating their pending visa applications.

(ii) A proposal to ensure that individuals whose immigrant visa applications were denied on the basis of the suspension and restriction on entry imposed by Proclamation 9645 or 9983 may have their applications reconsidered. This proposal shall consider whether to reopen immigrant visa applications that were denied due to the suspension and restriction on entry imposed by Proclamation 9645 or 9983, whether it is necessary to charge an additional fee to process those visa applications, and development of a plan for the Department of State to expedite consideration of those visa applications.

(iii) A plan to ensure that visa applicants are not prejudiced as a result of a previous visa denial due to the suspension and restriction on entry imposed by Proclamation 9645 or 9983 if they choose to re-apply for a visa.

Sec. 3. *Review of Information-Sharing Relationships and a Plan to Strengthen Partnerships.* Within 120 days of the date of this proclamation, the Secretary of State and the Secretary of Homeland Security, in consultation with the Director of National Intelligence, shall provide to the President a report consisting of the following elements:

(a) A description of the current screening and vetting procedures for those seeking immigrant and nonimmigrant entry to the United States. This should include information about any procedures put in place as a result of any of the Executive Order and Proclamations revoked in section 1 of this proclamation and should also include an evaluation of the usefulness of form DS–5535.

(b) A review of foreign government information-sharing practices vis-à-vis the United States in order to evaluate the efficacy of those practices, their contribution to processes for screening and vetting those individuals seeking entry to the United States as immigrants and nonimmigrants, and how the United States ensures the accuracy and reliability of the information provided by foreign governments.

(c) Recommendations to improve screening and vetting activities, including diplomatic efforts to improve international information-sharing, use of foreign assistance funds, where appropriate, to support capacity building for information-sharing and identity-management practices, and ways to further integrate relevant executive department and agency data into the vetting system.

(d) A review of the current use of social media identifiers in the screening and vetting process, including an assessment of whether this use has meaningfully improved screening and vetting, and recommendations in light of this assessment.

Sec. 4. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

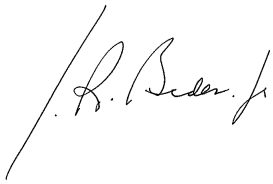
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by

any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2021–01749
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13985 of January 20, 2021

Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Policy.* Equal opportunity is the bedrock of American democracy, and our diversity is one of our country's greatest strengths. But for too many, the American Dream remains out of reach. Entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied that equal opportunity to individuals and communities. Our country faces converging economic, health, and climate crises that have exposed and exacerbated inequities, while a historic movement for justice has highlighted the unbearable human costs of systemic racism. Our Nation deserves an ambitious whole-of-government equity agenda that matches the scale of the opportunities and challenges that we face.

It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.

By advancing equity across the Federal Government, we can create opportunities for the improvement of communities that have been historically underserved, which benefits everyone. For example, an analysis shows that closing racial gaps in wages, housing credit, lending opportunities, and access to higher education would amount to an additional $5 trillion in gross domestic product in the American economy over the next 5 years. The Federal Government's goal in advancing equity is to provide everyone with the opportunity to reach their full potential. Consistent with these aims, each agency must assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups. Such assessments will better equip agencies to develop policies and programs that deliver resources and benefits equitably to all.

Sec. 2. *Definitions.* For purposes of this order: (a) The term ''equity'' means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

(b) The term ''underserved communities'' refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of ''equity.''

Sec. 3. *Role of the Domestic Policy Council.* The role of the White House Domestic Policy Council (DPC) is to coordinate the formulation and implementation of my Administration's domestic policy objectives. Consistent with this role, the DPC will coordinate efforts to embed equity principles, policies, and approaches across the Federal Government. This will include efforts to remove systemic barriers to and provide equal access to opportunities and benefits, identify communities the Federal Government has underserved, and develop policies designed to advance equity for those communities. The DPC-led interagency process will ensure that these efforts are made in coordination with the directors of the National Security Council and the National Economic Council.

Sec. 4. *Identifying Methods to Assess Equity.* (a) The Director of the Office of Management and Budget (OMB) shall, in partnership with the heads of agencies, study methods for assessing whether agency policies and actions create or exacerbate barriers to full and equal participation by all eligible individuals. The study should aim to identify the best methods, consistent with applicable law, to assist agencies in assessing equity with respect to race, ethnicity, religion, income, geography, gender identity, sexual orientation, and disability.

(b) As part of this study, the Director of OMB shall consider whether to recommend that agencies employ pilot programs to test model assessment tools and assist agencies in doing so.

(c) Within 6 months of the date of this order, the Director of OMB shall deliver a report to the President describing the best practices identified by the study and, as appropriate, recommending approaches to expand use of those methods across the Federal Government.

Sec. 5. *Conducting an Equity Assessment in Federal Agencies.* The head of each agency, or designee, shall, in consultation with the Director of OMB, select certain of the agency's programs and policies for a review that will assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available pursuant to those policies and programs. The head of each agency, or designee, shall conduct such review and within 200 days of the date of this order provide a report to the Assistant to the President for Domestic Policy (APDP) reflecting findings on the following:

(a) Potential barriers that underserved communities and individuals may face to enrollment in and access to benefits and services in Federal programs;

(b) Potential barriers that underserved communities and individuals may face in taking advantage of agency procurement and contracting opportunities;

(c) Whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs; and

(d) The operational status and level of institutional resources available to offices or divisions within the agency that are responsible for advancing civil rights or whose mandates specifically include serving underrepresented or disadvantaged communities.

Sec. 6. *Allocating Federal Resources to Advance Fairness and Opportunity.* The Federal Government should, consistent with applicable law, allocate resources to address the historic failure to invest sufficiently, justly, and equally in underserved communities, as well as individuals from those communities. To this end:

(a) The Director of OMB shall identify opportunities to promote equity in the budget that the President submits to the Congress.

(b) The Director of OMB shall, in coordination with the heads of agencies, study strategies, consistent with applicable law, for allocating Federal resources in a manner that increases investment in underserved communities, as well as individuals from those communities. The Director of OMB shall report the findings of this study to the President.

Sec. 7. *Promoting Equitable Delivery of Government Benefits and Equitable Opportunities.* Government programs are designed to serve all eligible individuals. And Government contracting and procurement opportunities should be available on an equal basis to all eligible providers of goods and services. To meet these objectives and to enhance compliance with existing civil rights laws:

(a) Within 1 year of the date of this order, the head of each agency shall consult with the APDP and the Director of OMB to produce a plan for addressing:

(i) any barriers to full and equal participation in programs identified pursuant to section 5(a) of this order; and

(ii) any barriers to full and equal participation in agency procurement and contracting opportunities identified pursuant to section 5(b) of this order.

(b) The Administrator of the U.S. Digital Service, the United States Chief Technology Officer, the Chief Information Officer of the United States, and the heads of other agencies, or their designees, shall take necessary actions, consistent with applicable law, to support agencies in developing such plans.

Sec. 8. *Engagement with Members of Underserved Communities.* In carrying out this order, agencies shall consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs. The head of each agency shall evaluate opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations.

Sec. 9. *Establishing an Equitable Data Working Group.* Many Federal datasets are not disaggregated by race, ethnicity, gender, disability, income, veteran status, or other key demographic variables. This lack of data has cascading effects and impedes efforts to measure and advance equity. A first step to promoting equity in Government action is to gather the data necessary to inform that effort.

(a) *Establishment.* There is hereby established an Interagency Working Group on Equitable Data (Data Working Group).

(b) *Membership.*

(i) The Chief Statistician of the United States and the United States Chief Technology Officer shall serve as Co-Chairs of the Data Working Group and coordinate its work. The Data Working Group shall include representatives of agencies as determined by the Co-Chairs to be necessary to complete the work of the Data Working Group, but at a minimum shall include the following officials, or their designees:

(A) the Director of OMB;

(B) the Secretary of Commerce, through the Director of the U.S. Census Bureau;

(C) the Chair of the Council of Economic Advisers;

(D) the Chief Information Officer of the United States;

(E) the Secretary of the Treasury, through the Assistant Secretary of the Treasury for Tax Policy;

(F) the Chief Data Scientist of the United States; and

(G) the Administrator of the U.S. Digital Service.

(ii) The DPC shall work closely with the Co-Chairs of the Data Working Group and assist in the Data Working Group's interagency coordination functions.

(iii) The Data Working Group shall consult with agencies to facilitate the sharing of information and best practices, consistent with applicable law.

(c) *Functions.* The Data Working Group shall:

(i) through consultation with agencies, study and provide recommendations to the APDP identifying inadequacies in existing Federal data collection programs, policies, and infrastructure across agencies, and strategies for addressing any deficiencies identified; and

(ii) support agencies in implementing actions, consistent with applicable law and privacy interests, that expand and refine the data available to the Federal Government to measure equity and capture the diversity of the American people.

(d) OMB shall provide administrative support for the Data Working Group, consistent with applicable law.

Sec. 10. *Revocation.* (a) Executive Order 13950 of September 22, 2020 (Combating Race and Sex Stereotyping), is hereby revoked.

(b) The heads of agencies covered by Executive Order 13950 shall review and identify proposed and existing agency actions related to or arising from Executive Order 13950. The head of each agency shall, within 60 days of the date of this order, consider suspending, revising, or rescinding any such actions, including all agency actions to terminate or restrict contracts or grants pursuant to Executive Order 13950, as appropriate and consistent with applicable law.

(c) Executive Order 13958 of November 2, 2020 (Establishing the President's Advisory 1776 Commission), is hereby revoked.

Sec. 11. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

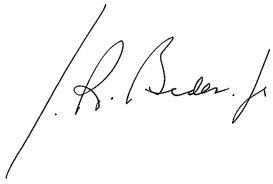
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Independent agencies are strongly encouraged to comply with the provisions of this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2021.

[FR Doc. 2021–01753
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13986 of January 20, 2021

Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Background.* We have long guaranteed all of the Nation's inhabitants representation in the House of Representatives. This tradition is foundational to our representative democracy, for our elected representatives have a responsibility to represent the interests of all people residing in the United States and affected by our laws. This tradition also respects the dignity and humanity of every person. Accordingly, the executive branch has always determined the population of each State, for purposes of congressional representation, without regard to whether its residents are in lawful immigration status.

The census and apportionment processes are enshrined in the Constitution. The Fourteenth Amendment apportions seats in the House of Representatives ''among the several States according to their respective numbers, counting the whole number of persons in each State.'' (U.S. Const. amend. XIV, sec. 2.) Article I, in turn, provides that, in order to determine those numbers, an ''actual Enumeration'' of the population of the United States must be conducted every 10 years. (U.S. Const. art. I, sec. 2, cl. 3.) The Congress has assigned responsibility for conducting the decennial census to the Secretary of Commerce (Secretary). (13 U.S.C. 141(a).)

Once the Secretary, through the Director of the U.S. Census Bureau, takes the count, the President must carry out the apportionment of Representatives among the States. The Secretary prepares the ''tabulation of total population by States . . . as required for the apportionment of Representatives,'' and reports that tabulation to the President. (13 U.S.C. 141(b).) The President then sends a statement to the Congress showing ''the whole number of persons in each State,'' as ascertained under the census, and ''the number of Representatives to which each State would be entitled under'' the equal proportions apportionment method. (2 U.S.C. 2a(a).) The Clerk of the House of Representatives then transmits to each State a certification of the number of seats that the State receives under that apportionment. (2 U.S.C. 2a(b).) Finally, within 1 year of the decennial census date, the Secretary must also report to the Governor and officers or public bodies having responsibility for legislative apportionment or districting of each State the population tabulations to be used for apportioning districts within that State. (13 U.S.C. 141(c).)

At no point since our Nation's Founding has a person's immigration status alone served as a basis for excluding that person from the total population count used in apportionment. Before the Civil War and the abolition of slavery, the Constitution did not give equal weight to every person counted under the census. (U.S. Const. art. 1, sec. 2.) In accord with constitutional and statutory requirements, however, every apportionment since ratification of the Fourteenth Amendment has calculated each State's share of Representatives based on ''the whole number of persons in each State,'' excluding only ''Indians not taxed''—an express constitutional exception that no longer has legal or practical effect. (U.S. Const. amend. XIV, sec. 2; 2 U.S.C. 2a(a).) The term ''persons in each State'' has always been understood to include every person whose usual place of residence was in that State as of the

designated census date. (*See, e.g.,* Act of Mar. 1, 1790, ch. 2, secs. 1, 5, 1 Stat. 101, 103; *Franklin* v. *Massachusetts,* 505 U.S. 788, 804 (1992).) This unbroken practice has ensured that ''the basis of representation in the House'' is ''every individual of the community at large.'' (*Evenwel* v. *Abbott,* 136 S. Ct. 1120, 1127 (2016) (emphasis and quotation marks omitted).) And it reflects a sound policy judgment that the apportionment base be both clear and insulated against manipulation designed to affect the balance of power among the States.

During the 2020 Census, the President announced a policy that broke from this long tradition. It aimed to produce a different apportionment base—one that would, to the maximum extent feasible, exclude persons who are not in a lawful immigration status. *See* Presidential Memorandum of July 21, 2020 (Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census). This policy conflicted with the principle of equal representation enshrined in our Constitution, census statutes, and historical tradition. The policy further required the Census Bureau to inappropriately rely on records related to immigration status that were likely to be incomplete and inaccurate.

Sec. 2. *Policy.* Both the Fourteenth Amendment of the United States Constitution and section 2a(a) of title 2, United States Code, require that the apportionment base of each State, for the purpose of the reapportionment of Representatives following the decennial census, include all persons whose usual place of residence was in that State as of the designated census date, regardless of their immigration status. These laws, affirmed by the executive branch's longstanding historical practice, do not permit the exclusion of inhabitants of the United States from the apportionment base solely on the ground that they lack a lawful immigration status. Reflecting this legal background, and the values of equal representation and respect that the Constitution and laws embody, it is the policy of the United States that reapportionment shall be based on the total number of persons residing in the several States, without regard for immigration status. It is likewise essential that the census count be accurate and based on reliable and high-quality data.

Sec. 3. *Ensuring that the Apportionment Base and State-Level Tabulations Include All Inhabitants of Each State.* In preparing the report to the President required under section 141(b) of title 13, United States Code, the Secretary shall report the tabulation of total population by State that reflects the whole number of persons whose usual residence was in each State as of the designated census date in section 141(a) of title 13, United States Code, without regard to immigration status. In addition, the Secretary shall use tabulations of population reflecting the whole number of persons whose usual residence was in each State as of the census date, without regard to immigration status, in reports provided to the Governor and officers or public bodies having responsibility for legislative apportionment or districting of each State under section 141(c) of title 13, United States Code.

Sec. 4. *Data Quality.* The Secretary shall take all necessary steps, consistent with law, to ensure that the total population information presented to the President and to the States is accurate and complies with all applicable laws.

Sec. 5. *Revocation.* Executive Order 13880 of July 11, 2019 (Collecting Information About Citizenship Status in Connection With the Decennial Census), and the Presidential Memorandum of July 21, 2020 (Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census), are hereby revoked.

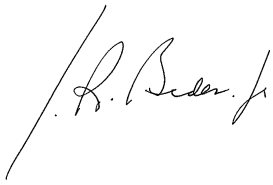
Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2021.

[FR Doc. 2021–01755
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13987 of January 20, 2021

Organizing and Mobilizing the United States Government To Provide a Unified and Effective Response To Combat COVID–19 and To Provide United States Leadership on Global Health and Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* The Federal Government must act swiftly and aggressively to combat coronavirus disease 2019 (COVID–19). To that end, this order creates the position of Coordinator of the COVID–19 Response and Counselor to the President and takes other steps to organize the White House and activities of the Federal Government to combat COVID–19 and prepare for future biological and pandemic threats.

Sec. 2. *Organizing the White House to Combat COVID–19.* (a) In order to effectively, fully, and immediately respond to COVID–19, there is established within the Executive Office of the President the position of Coordinator of the COVID–19 Response and Counselor to the President (COVID–19 Response Coordinator) and the position of Deputy Coordinator of the COVID–19 Response. The COVID–19 Response Coordinator shall report directly to the President; advise and assist the President and executive departments and agencies (agencies) in responding to the COVID–19 pandemic; coordinate all elements of the COVID–19 response; and perform such duties as the President may otherwise direct. These duties shall include:

(i) coordinating a Government-wide effort to reduce disparities in the response, care, and treatment of COVID–19, including racial and ethnic disparities;

(ii) coordinating the Federal Government's efforts to produce, supply, and distribute personal protective equipment, vaccines, tests, and other supplies for the Nation's COVID–19 response, including through the use of the Defense Production Act, as amended (50 U.S.C. 4501 *et seq.*);

(iii) coordinating the Federal Government's efforts to expand COVID–19 testing and the use of testing as an effective public health response;

(iv) coordinating the Federal Government's efforts to support the timely, safe, and effective delivery of COVID–19 vaccines to the United States population;

(v) coordinating the Federal Government's efforts to support the safe reopening and operation of schools, child care providers, and Head Start programs, and to help ensure the continuity of educational and other services for young children and elementary and secondary students during the COVID–19 pandemic; and

(vi) coordinating, as appropriate, with State, local, Tribal, and territorial authorities.

(b) The COVID–19 Response Coordinator shall have the authority to convene principals from relevant agencies, in consultation with the Assistant to the President for Domestic Policy (APDP) on matters involving the domestic COVID–19 response, and in consultation with the Assistant to the President for National Security Affairs (APNSA) on matters involving the global COVID–19 response. The COVID–19 Response Coordinator shall also coordinate any corresponding deputies and interagency processes.

(c) The COVID–19 Response Coordinator may act through designees in performing these or any other duties.

Sec. 3. *United States Leadership on Global Health and Security and the Global COVID–19 Response.*

(a) *Preparing to Respond to Biological Threats and Pandemics.* To identify, monitor, prepare for, and, if necessary, respond to emerging biological and pandemic threats:

(i) The APNSA shall convene the National Security Council (NSC) Principals Committee as necessary to coordinate the Federal Government's efforts to address such threats and to advise the President on the global response to and recovery from COVID–19, including matters regarding: the intersection of the COVID–19 response and other national security equities; global health security; engaging with and strengthening the World Health Organization; public health, access to healthcare, and the secondary impacts of COVID–19; and emerging biological risks and threats, whether naturally occurring, deliberate, or accidental.

(ii) Within 180 days of the date of this order, the APNSA shall, in coordination with relevant agencies, the COVID–19 Response Coordinator, and the APDP, complete a review of and recommend actions to the President concerning emerging domestic and global biological risks and national biopreparedness policies. The review and recommended actions shall incorporate lessons from the COVID–19 pandemic and, among other things, address: the readiness of the pandemic supply chain, healthcare workforce, and hospitals; the development of a framework of pandemic readiness with specific triggers for when agencies should take action in response to large-scale biological events; pandemic border readiness; the development and distribution of medical countermeasures; epidemic forecasting and modeling; public health data modernization; bio-related intelligence; bioeconomic investments; biotechnology risks; the development of a framework for coordinating with and distributing responsibilities as between the Federal Government and State, local, Tribal, and territorial authorities; and State, local, Tribal, and territorial preparedness for biological events.

(b) *NSC Directorate on Global Health Security and Biodefense.* There shall be an NSC Directorate on Global Health Security and Biodefense, which shall be headed by a Senior Director for Global Health Security and Biodefense. The Senior Director shall be responsible for monitoring current and emerging biological threats, and shall report concurrently to the APNSA and to the COVID–19 Response Coordinator on matters relating to COVID–19. The Senior Director shall oversee the Global Health Security Agenda Interagency Review Council, which was established pursuant to Executive Order 13747 of November 4, 2016 (Advancing the Global Health Security Agenda To Achieve a World Safe and Secure From Infectious Disease Threats), and is hereby reconvened as described in that order.

(c) *Responsibility for National Biodefense Preparedness.* Notwithstanding any statements in the National Security Presidential Memorandum–14 of September 18, 2018 (Support for National Biodefense), the APNSA shall be responsible for coordinating the Nation's biodefense preparedness efforts, and, as stated in sections 1 and 2 of this order, the COVID–19 Response Coordinator shall be responsible for coordinating the Federal Government's response to the COVID–19 pandemic.

Sec. 4. *Prompt Resolution of Issues Related to the United States COVID–19 Response.* The heads of agencies shall, as soon as practicable, bring any procedural, departmental, legal, or funding obstacle to the COVID–19 response to the attention of the COVID–19 Response Coordinator. The COVID–19 Response Coordinator shall, in coordination with relevant agencies, the APDP, and the APNSA, as appropriate, immediately bring to the President's attention any issues that require Presidential guidance or decision-making.

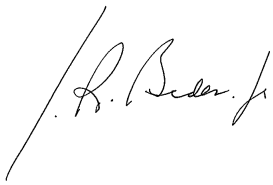
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2021.

[FR Doc. 2021–01759
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13988 of January 20, 2021

Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports. Adults should be able to earn a living and pursue a vocation knowing that they will not be fired, demoted, or mistreated because of whom they go home to or because how they dress does not conform to sex-based stereotypes. People should be able to access healthcare and secure a roof over their heads without being subjected to sex discrimination. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.

These principles are reflected in the Constitution, which promises equal protection of the laws. These principles are also enshrined in our Nation's anti-discrimination laws, among them Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*). In *Bostock* v. *Clayton County,* 590 U.S.__(2020), the Supreme Court held that Title VII's prohibition on discrimination ''because of . . . sex'' covers discrimination on the basis of gender identity and sexual orientation. Under *Bostock's* reasoning, laws that prohibit sex discrimination—including Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 *et seq.*), the Fair Housing Act, as amended (42 U.S.C. 3601 *et seq.*), and section 412 of the Immigration and Nationality Act, as amended (8 U.S.C. 1522), along with their respective implementing regulations—prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary.

Discrimination on the basis of gender identity or sexual orientation manifests differently for different individuals, and it often overlaps with other forms of prohibited discrimination, including discrimination on the basis of race or disability. For example, transgender Black Americans face unconscionably high levels of workplace discrimination, homelessness, and violence, including fatal violence.

It is the policy of my Administration to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation. It is also the policy of my Administration to address overlapping forms of discrimination.

Sec. 2. *Enforcing Prohibitions on Sex Discrimination on the Basis of Gender Identity or Sexual Orientation.* (a) The head of each agency shall, as soon as practicable and in consultation with the Attorney General, as appropriate, review all existing orders, regulations, guidance documents, policies, programs, or other agency actions (''agency actions'') that:

(i) were promulgated or are administered by the agency under Title VII or any other statute or regulation that prohibits sex discrimination, including any that relate to the agency's own compliance with such statutes or regulations; and

(ii) are or may be inconsistent with the policy set forth in section 1 of this order.

(b) The head of each agency shall, as soon as practicable and as appropriate and consistent with applicable law, including the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), consider whether to revise, suspend, or rescind such agency actions, or promulgate new agency actions, as necessary to fully implement statutes that prohibit sex discrimination and the policy set forth in section 1 of this order.

(c) The head of each agency shall, as soon as practicable, also consider whether there are additional actions that the agency should take to ensure that it is fully implementing the policy set forth in section 1 of this order. If an agency takes an action described in this subsection or subsection (b) of this section, it shall seek to ensure that it is accounting for, and taking appropriate steps to combat, overlapping forms of discrimination, such as discrimination on the basis of race or disability.

(d) Within 100 days of the date of this order, the head of each agency shall develop, in consultation with the Attorney General, as appropriate, a plan to carry out actions that the agency has identified pursuant to subsections (b) and (c) of this section, as appropriate and consistent with applicable law.

Sec. 3. *Definition.* ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

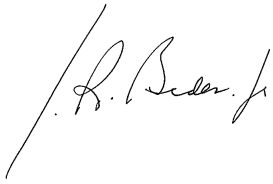
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2021.

[FR Doc. 2021–01761
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

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Title 3—

The President

Executive Order 13989 of January 20, 2021

Ethics Commitments by Executive Branch Personnel

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Ethics Pledge.* Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

''I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

''Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

''1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

''2. *Revolving Door Ban—All Appointees Entering Government.* I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

''3. *Revolving Door Ban—Lobbyists and Registered Agents Entering Government.* If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq.,* or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq.,* within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

''4. *Revolving Door Ban—Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing

regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

''5. *Revolving Door Ban—Senior and Very Senior Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

''6. *Revolving Door Ban—Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

''7. *Golden Parachute Ban.* I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

''8. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

''9. *Assent to Enforcement.* I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Personnel,' issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.''

Sec. 2. *Definitions.* For purposes of this order and the pledge set forth in section 1 of this order:

(a) ''Executive agency'' shall include each ''executive agency'' as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that ''executive agency'' shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) ''Appointee'' shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) ''Gift'':

(i) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(ii) shall include gifts that are solicited or accepted indirectly, as defined in section 2635.203(f) of title 5, Code of Federal Regulations; and

(iii) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) and (3), and (j) through (l) of title 5, Code of Federal Regulations.

(d) ''Covered executive branch official'' and ''lobbyist'' shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) ''Registered lobbyist or lobbying organization'' shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, ''registered lobbyist'' shall include each of the lobbyists identified therein.

(f) ''Lobby'' and ''lobbied'' shall mean to act or have acted as a registered lobbyist.

(g) ''Lobbying activities'' shall have the definition set forth in section 1602 of title 2, United States Code.

(h) ''Materially assist'' means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual's subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.

(i) ''Particular matter'' shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(j) ''Particular matter involving specific parties'' shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(k) ''Former employer'' is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that ''former employer'' does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

(l) ''Former client'' is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services.

(m) ''Directly and substantially related to my former employer or former clients'' shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(n) ''Participate'' means to participate personally and substantially.

(o) ''Government official'' means any employee of the executive branch.

(p) ''Administration'' means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(q) ''Pledge'' means the ethics pledge set forth in section 1 of this order.

(r) ''Senior White House staff'' means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.

(s) All references to provisions of law and regulations shall refer to such provisions as are in effect on January 20, 2021.

Sec. 3. *Waiver.* (a) The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of OMB certifies in writing:

(i) that the literal application of the restriction is inconsistent with the purposes of the restriction; or

(ii) that it is in the public interest to grant the waiver. Any such written waiver should reflect the basis for the waiver and, in the case of a waiver of the restrictions set forth in paragraphs 3(b) and (c) of the pledge, a discussion of the findings with respect to the factors set forth in subsection (b) of this section.

(b) A waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter.

(c) The public interest shall include, but not be limited to, exigent circumstances relating to national security, the economy, public health, or the environment. In determining whether it is in the public interest to grant a waiver of the restrictions contained in paragraphs 3(b) and (c) of the pledge, the responsible official may consider the following factors:

(i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;

(ii) the uniqueness of the individual's qualifications to meet the government's needs;

(iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were *de minimis* or rendered on behalf of a nonprofit organization; and

(iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services, such as those required by paragraph 3(a) of the pledge.

Sec. 4. *Administration.* (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure:

(i) that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee;

(ii) that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President prior to the appointee commencing work;

(iii) that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and

(iv) that the agency generally complies with this order.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) of this order shall be the responsibility of the Counsel to the President.

(c) The Director of the Office of Government Ethics shall:

(i) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) of this order;

(ii) in consultation with the Attorney General or the Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(iii) in consultation with the Attorney General and the Counsel to the President, adopt such rules or procedures as are necessary or appropriate:

(A) to carry out the foregoing responsibilities;

(B) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(C) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(D) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by the employees' official actions do not affect the integrity of the Government's programs and operations;

(E) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(iv) in consultation with the Director of OMB, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure. This report shall include recommendations on steps the executive branch can take to expand, to the fullest extent practicable, disclosure of both executive branch procurement lobbying and of lobbying for Presidential pardons. These recommendations shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation; and

(v) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service. This report shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. *Enforcement.* (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations

of this order and for referrals to the Attorney General for consideration pursuant to subsection (c) of this order.

(c) The Attorney General is authorized:

(i) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(ii) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(i) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(ii) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. *General Provisions.* (a) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

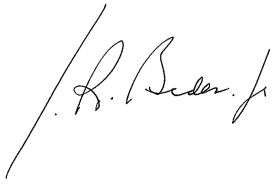
(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2021.

[FR Doc. 2021–01762
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13990 of January 20, 2021

Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* Our Nation has an abiding commitment to empower our workers and communities; promote and protect our public health and the environment; and conserve our national treasures and monuments, places that secure our national memory. Where the Federal Government has failed to meet that commitment in the past, it must advance environmental justice. In carrying out this charge, the Federal Government must be guided by the best science and be protected by processes that ensure the integrity of Federal decision-making. It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

To that end, this order directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.

Sec. 2. *Immediate Review of Agency Actions Taken Between January 20, 2017, and January 20, 2021.* (a) The heads of all agencies shall immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policy set forth in section 1 of this order. For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions. In addition, for the agency actions in the 4 categories set forth in subsections (i) through (iv) of this section, the head of the relevant agency, as appropriate and consistent with applicable law, shall consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the agency action within the time frame specified.

(i) Reducing Methane Emissions in the Oil and Gas Sector: ''Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration,'' 85 FR 57398 (September 15, 2020), by September 2021.

(ii) Establishing Ambitious, Job-Creating Fuel Economy Standards: ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,'' 84 FR 51310 (September 27, 2019), by April 2021; and ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks,'' 85 FR 24174 (April 30,

2020), by July 2021. In considering whether to propose suspending, revising, or rescinding the latter rule, the agency should consider the views of representatives from labor unions, States, and industry.

(iii) Job-Creating Appliance- and Building-Efficiency Standards: ''Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment,'' 85 FR 8626 (February 14, 2020), with major revisions proposed by March 2021 and any remaining revisions proposed by June 2021; ''Energy Conservation Program for Appliance Standards: Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards,'' 85 FR 50937 (August 19, 2020), with major revisions proposed by March 2021 and any remaining revisions proposed by June 2021; ''Final Determination Regarding Energy Efficiency Improvements in the 2018 International Energy Conservation Code (IECC),'' 84 FR 67435 (December 10, 2019), by May 2021; ''Final Determination Regarding Energy Efficiency Improvements in ANSI/ASHRAE/IES Standard 90.1–2016: Energy Standard for Buildings, Except Low-Rise Residential Buildings,'' 83 FR 8463 (February 27, 2018), by May 2021.

(iv) Protecting Our Air from Harmful Pollution: ''National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review,'' 85 FR 31286 (May 22, 2020), by August 2021; ''Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process,'' 85 FR 84130 (December 23, 2020), as soon as possible; ''Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information,'' 86 FR 469 (January 6, 2021), as soon as possible.

(b) Within 30 days of the date of this order, heads of agencies shall submit to the Director of the Office of Management and Budget (OMB) a preliminary list of any actions being considered pursuant to section (2)(a) of this order that would be completed by December 31, 2021, and that would be subject to OMB review. Within 90 days of the date of this order, heads of agencies shall submit to the Director of OMB an updated list of any actions being considered pursuant to section (2)(a) of this order that would be completed by December 31, 2025, and that would be subject to OMB review. At the time of submission to the Director of OMB, heads of agencies shall also send each list to the National Climate Advisor. In addition, and at the same time, heads of agencies shall send to the National Climate Advisor a list of additional actions being considered pursuant to section (2)(a) of this order that would not be subject to OMB review.

(c) Heads of agencies shall, as appropriate and consistent with applicable law, consider whether to take any additional agency actions to fully enforce the policy set forth in section 1 of this order. With respect to the Administrator of the Environmental Protection Agency, the following specific actions should be considered:

(i) proposing new regulations to establish comprehensive standards of performance and emission guidelines for methane and volatile organic compound emissions from existing operations in the oil and gas sector, including the exploration and production, transmission, processing, and storage segments, by September 2021; and

(ii) proposing a Federal Implementation Plan in accordance with the Environmental Protection Agency's ''Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2016 Oil and Natural Gas Industry Control Techniques Guidelines for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) and for States in the Ozone Transport Region,'' 85 FR 72963 (November 16, 2020), for California, Connecticut, New York, Pennsylvania, and Texas by January 2022.

(d) The Attorney General may, as appropriate and consistent with applicable law, provide notice of this order and any actions taken pursuant to section 2(a) of this order to any court with jurisdiction over pending litigation related to those agency actions identified pursuant to section (2)(a) of this order, and may, in his discretion, request that the court stay or otherwise dispose of litigation, or seek other appropriate relief consistent with this order, until the completion of the processes described in this order.

(e) In carrying out the actions directed in this section, heads of agencies shall seek input from the public and stakeholders, including State local, Tribal, and territorial officials, scientists, labor unions, environmental advocates, and environmental justice organizations.

Sec. 3. *Restoring National Monuments.* (a) The Secretary of the Interior, as appropriate and consistent with applicable law, including the Antiquities Act, 54 U.S.C. 320301 *et seq.,* shall, in consultation with the Attorney General, the Secretaries of Agriculture and Commerce, the Chair of the Council on Environmental Quality, and Tribal governments, conduct a review of the monument boundaries and conditions that were established by Proclamation 9681 of December 4, 2017 (Modifying the Bears Ears National Monument); Proclamation 9682 of December 4, 2017 (Modifying the Grand Staircase-Escalante National Monument); and Proclamation 10049 of June 5, 2020 (Modifying the Northeast Canyons and Seamounts Marine National Monument), to determine whether restoration of the monument boundaries and conditions that existed as of January 20, 2017, would be appropriate.

(b) Within 60 days of the date of this order, the Secretary of the Interior shall submit a report to the President summarizing the findings of the review conducted pursuant to subsection (a), which shall include recommendations for such Presidential actions or other actions consistent with law as the Secretary may consider appropriate to carry out the policy set forth in section 1 of this order.

(c) The Attorney General may, as appropriate and consistent with applicable law, provide notice of this order to any court with jurisdiction over pending litigation related to the Grand Staircase-Escalante, Bears Ears, and Northeast Canyons and Seamounts Marine National Monuments, and may, in his discretion, request that the court stay the litigation or otherwise delay further litigation, or seek other appropriate relief consistent with this order, pending the completion of the actions described in subsection (a) of this section.

Sec. 4. *Arctic Refuge.* (a) In light of the alleged legal deficiencies underlying the program, including the inadequacy of the environmental review required by the National Environmental Policy Act, the Secretary of the Interior shall, as appropriate and consistent with applicable law, place a temporary moratorium on all activities of the Federal Government relating to the implementation of the Coastal Plain Oil and Gas Leasing Program, as established by the Record of Decision signed August 17, 2020, in the Arctic National Wildlife Refuge. The Secretary shall review the program and, as appropriate and consistent with applicable law, conduct a new, comprehensive analysis of the potential environmental impacts of the oil and gas program.

(b) In Executive Order 13754 of December 9, 2016 (Northern Bering Sea Climate Resilience), and in the Presidential Memorandum of December 20, 2016 (Withdrawal of Certain Portions of the United States Arctic Outer Continental Shelf From Mineral Leasing), President Obama withdrew areas in Arctic waters and the Bering Sea from oil and gas drilling and established the Northern Bering Sea Climate Resilience Area. Subsequently, the order was revoked and the memorandum was amended in Executive Order 13795 of April 28, 2017 (Implementing an America-First Offshore Energy Strategy). Pursuant to section 12(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1341(a), Executive Order 13754 and the Presidential Memorandum of December 20, 2016, are hereby reinstated in their original form, thereby restoring the original withdrawal of certain offshore areas in Arctic waters and the Bering Sea from oil and gas drilling.

(c) The Attorney General may, as appropriate and consistent with applicable law, provide notice of this order to any court with jurisdiction over pending litigation related to the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge and other related programs, and may, in his discretion, request that the court stay the litigation or otherwise delay further litigation, or seek other appropriate relief consistent with this order, pending the completion of the actions described in subsection (a) of this section.

Sec. 5. *Accounting for the Benefits of Reducing Climate Pollution.* (a) It is essential that agencies capture the full costs of greenhouse gas emissions as accurately as possible, including by taking global damages into account. Doing so facilitates sound decision-making, recognizes the breadth of climate impacts, and supports the international leadership of the United States on climate issues. The ''social cost of carbon'' (SCC), ''social cost of nitrous oxide'' (SCN), and ''social cost of methane'' (SCM) are estimates of the monetized damages associated with incremental increases in greenhouse gas emissions. They are intended to include changes in net agricultural productivity, human health, property damage from increased flood risk, and the value of ecosystem services. An accurate social cost is essential for agencies to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other actions.

(b) There is hereby established an Interagency Working Group on the Social Cost of Greenhouse Gases (the ''Working Group''). The Chair of the Council of Economic Advisers, Director of OMB, and Director of the Office of Science and Technology Policy shall serve as Co-Chairs of the Working Group.

(i) Membership. The Working Group shall also include the following other officers, or their designees: the Secretary of the Treasury; the Secretary of the Interior; the Secretary of Agriculture; the Secretary of Commerce; the Secretary of Health and Human Services; the Secretary of Transportation; the Secretary of Energy; the Chair of the Council on Environmental Quality; the Administrator of the Environmental Protection Agency; the Assistant to the President and National Climate Advisor; and the Assistant to the President for Economic Policy and Director of the National Economic Council.

(ii) Mission and Work. The Working Group shall, as appropriate and consistent with applicable law:

(A) publish an interim SCC, SCN, and SCM within 30 days of the date of this order, which agencies shall use when monetizing the value of changes in greenhouse gas emissions resulting from regulations and other relevant agency actions until final values are published;

(B) publish a final SCC, SCN, and SCM by no later than January 2022;

(C) provide recommendations to the President, by no later than September 1, 2021, regarding areas of decision-making, budgeting, and procurement by the Federal Government where the SCC, SCN, and SCM should be applied;

(D) provide recommendations, by no later than June 1, 2022, regarding a process for reviewing, and, as appropriate, updating, the SCC, SCN, and SCM to ensure that these costs are based on the best available economics and science; and

(E) provide recommendations, to be published with the final SCC, SCN, and SCM under subparagraph (A) if feasible, and in any event by no later than June 1, 2022, to revise methodologies for calculating the SCC, SCN, and SCM, to the extent that current methodologies do not adequately take account of climate risk, environmental justice, and intergenerational equity.

(iii) Methodology. In carrying out its activities, the Working Group shall consider the recommendations of the National Academies of Science, Engineering, and Medicine as reported in Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide (2017) and other pertinent scientific literature; solicit public comment; engage with the public and stakeholders; seek the advice of ethics experts; and ensure that the SCC, SCN, and SCM reflect the interests of future generations in avoiding threats posed by climate change.

Sec. 6. *Revoking the March 2019 Permit for the Keystone XL Pipeline.* (a) On March 29, 2019, the President granted to TransCanada Keystone Pipeline, L.P. a Presidential permit (the ''Permit'') to construct, connect, operate, and maintain pipeline facilities at the international border of the United States and Canada (the ''Keystone XL pipeline''), subject to express conditions and potential revocation in the President's sole discretion. The Permit is hereby revoked in accordance with Article 1(1) of the Permit.

(b) In 2015, following an exhaustive review, the Department of State and the President determined that approving the proposed Keystone XL pipeline would not serve the U.S. national interest. That analysis, in addition to concluding that the significance of the proposed pipeline for our energy security and economy is limited, stressed that the United States must prioritize the development of a clean energy economy, which will in turn create good jobs. The analysis further concluded that approval of the proposed pipeline would undermine U.S. climate leadership by undercutting the credibility and influence of the United States in urging other countries to take ambitious climate action.

(c) Climate change has had a growing effect on the U.S. economy, with climate-related costs increasing over the last 4 years. Extreme weather events and other climate-related effects have harmed the health, safety, and security of the American people and have increased the urgency for combatting climate change and accelerating the transition toward a clean energy economy. The world must be put on a sustainable climate pathway to protect Americans and the domestic economy from harmful climate impacts, and to create well-paying union jobs as part of the climate solution.

(d) The Keystone XL pipeline disserves the U.S. national interest. The United States and the world face a climate crisis. That crisis must be met with action on a scale and at a speed commensurate with the need to avoid setting the world on a dangerous, potentially catastrophic, climate trajectory. At home, we will combat the crisis with an ambitious plan to build back better, designed to both reduce harmful emissions and create good clean-energy jobs. Our domestic efforts must go hand in hand with U.S. diplomatic engagement. Because most greenhouse gas emissions originate beyond our borders, such engagement is more necessary and urgent than ever. The United States must be in a position to exercise vigorous climate leadership in order to achieve a significant increase in global climate action and put the world on a sustainable climate pathway. Leaving the Keystone XL pipeline permit in place would not be consistent with my Administration's economic and climate imperatives.

Sec. 7. *Other Revocations.* (a) Executive Order 13766 of January 24, 2017 (Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects), Executive Order 13778 of February 28, 2017 (Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ''Waters of the United States'' Rule), Executive Order 13783 of March 28, 2017 (Promoting Energy Independence and Economic Growth), Executive Order 13792 of April 26, 2017 (Review of Designations Under the Antiquities Act), Executive Order 13795 of April 28, 2017 (Implementing an America-First Offshore Energy Strategy), Executive Order 13868 of April 10, 2019 (Promoting Energy Infrastructure and Economic Growth), and Executive Order 13927 of June 4, 2020 (Accelerating the Nation's Economic Recovery from the COVID–19 Emergency by Expediting Infrastructure Investments and Other Activities), are hereby revoked. Executive Order 13834 of May 17, 2018

(Efficient Federal Operations), is hereby revoked except for sections 6, 7, and 11.

(b) Executive Order 13807 of August 15, 2017 (Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects), is hereby revoked. The Director of OMB and the Chair of the Council on Environmental Quality shall jointly consider whether to recommend that a replacement order be issued.

(c) Executive Order 13920 of May 1, 2020 (Securing the United States Bulk-Power System), is hereby suspended for 90 days. The Secretary of Energy and the Director of OMB shall jointly consider whether to recommend that a replacement order be issued.

(d) The Presidential Memorandum of April 12, 2018 (Promoting Domestic Manufacturing and Job Creation Policies and Procedures Relating to Implementation of Air Quality Standards), the Presidential Memorandum of October 19, 2018 (Promoting the Reliable Supply and Delivery of Water in the West), and the Presidential Memorandum of February 19, 2020 (Developing and Delivering More Water Supplies in California), are hereby revoked.

(e) The Council on Environmental Quality shall rescind its draft guidance entitled, ''Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions,'' 84 FR 30097 (June 26, 2019). The Council, as appropriate and consistent with applicable law, shall review, revise, and update its final guidance entitled, ''Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews,'' 81 FR 51866 (August 5, 2016).

(f) The Director of OMB and the heads of agencies shall promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, including, if necessary, by proposing such rescissions through notice-and-comment rulemaking, implementing or enforcing the Executive Orders, Presidential Memoranda, and draft guidance identified in this section, as appropriate and consistent with applicable law.

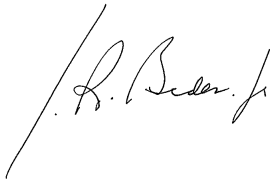
Sec. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2021.

[FR Doc. 2021–01765
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13991 of January 20, 2021

Protecting the Federal Workforce and Requiring Mask-Wearing

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7902(c) of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of my Administration to halt the spread of coronavirus disease 2019 (COVID–19) by relying on the best available data and science-based public health measures. Such measures include wearing masks when around others, physical distancing, and other related precautions recommended by the Centers for Disease Control and Prevention (CDC). Put simply, masks and other public health measures reduce the spread of the disease, particularly when communities make widespread use of such measures, and thus save lives.

Accordingly, to protect the Federal workforce and individuals interacting with the Federal workforce, and to ensure the continuity of Government services and activities, on-duty or on-site Federal employees, on-site Federal contractors, and other individuals in Federal buildings and on Federal lands should all wear masks, maintain physical distance, and adhere to other public health measures, as provided in CDC guidelines.

Sec. 2. *Immediate Action Regarding Federal Employees, Contractors, Buildings, and Lands.* (a) The heads of executive departments and agencies (agencies) shall immediately take action, as appropriate and consistent with applicable law, to require compliance with CDC guidelines with respect to wearing masks, maintaining physical distance, and other public health measures by: on-duty or on-site Federal employees; on-site Federal contractors; and all persons in Federal buildings or on Federal lands.

(b) The Director of the Office of Management and Budget (OMB), the Director of the Office of Personnel Management (OPM), and the Administrator of General Services, in coordination with the President's Management Council and the Coordinator of the COVID–19 Response and Counselor to the President (COVID–19 Response Coordinator), shall promptly issue guidance to assist heads of agencies with implementation of this section.

(c) Heads of agencies shall promptly consult, as appropriate, with State, local, Tribal, and territorial government officials, Federal employees, Federal employee unions, Federal contractors, and any other interested parties concerning the implementation of this section.

(d) Heads of agencies may make categorical or case-by-case exceptions in implementing subsection (a) of this section to the extent that doing so is necessary or required by law, and consistent with applicable law. If heads of agencies make such exceptions, they shall require appropriate alternative safeguards, such as additional physical distancing measures, additional testing, or reconfiguration of workspace, consistent with applicable law. Heads of agencies shall document all exceptions in writing.

(e) Heads of agencies shall review their existing authorities and, to the extent permitted by law and subject to the availability of appropriations and resources, seek to provide masks to individuals in Federal buildings when needed.

(f) The COVID–19 Response Coordinator shall coordinate the implementation of this section. Heads of the agencies listed in 31 U.S.C. 901(b) shall

update the COVID–19 Response Coordinator on their progress in implementing this section, including any categorical exceptions established under subsection (d) of this section, within 7 days of the date of this order and regularly thereafter. Heads of agencies are encouraged to bring to the attention of the COVID–19 Response Coordinator any questions regarding the scope or implementation of this section.

Sec. 3. *Encouraging Masking Across America.* (a) The Secretary of Health and Human Services (HHS), including through the Director of CDC, shall engage, as appropriate, with State, local, Tribal, and territorial officials, as well as business, union, academic, and other community leaders, regarding mask-wearing and other public health measures, with the goal of maximizing public compliance with, and addressing any obstacles to, mask-wearing and other public health best practices identified by CDC.

(b) The COVID–19 Response Coordinator, in coordination with the Secretary of HHS, the Secretary of Homeland Security, and the heads of other relevant agencies, shall promptly identify and inform agencies of options to incentivize, support, and encourage widespread mask-wearing consistent with CDC guidelines and applicable law.

Sec. 4. *Safer Federal Workforce Task Force.*

(a) *Establishment.* There is hereby established the Safer Federal Workforce Task Force (Task Force).

(b) *Membership.* The Task Force shall consist of the following members:

(i) the Director of OPM, who shall serve as Co-Chair;

(ii) the Administrator of General Services, who shall serve as Co-Chair;

(iii) the COVID–19 Response Coordinator, who shall serve as Co-Chair;

(iv) the Director of OMB;

(v) the Director of the Federal Protective Service;

(vi) the Director of the United States Secret Service;

(vii) the Administrator of the Federal Emergency Management Agency;

(viii) the Director of CDC; and

(ix) the heads of such other agencies as the Co-Chairs may individually or jointly invite to participate.

(c) *Organization.* A member of the Task Force may designate, to perform the Task Force functions of the member, a senior-level official who is a full-time officer or employee of the member's agency. At the direction of the Co-Chairs, the Task Force may establish subgroups consisting exclusively of Task Force members or their designees, as appropriate.

(d) *Administration.* The General Services Administration shall provide funding and administrative support for the Task Force to the extent permitted by law and within existing appropriations. The Co-Chairs shall convene regular meetings of the Task Force, determine its agenda, and direct its work.

(e) *Mission.* The Task Force shall provide ongoing guidance to heads of agencies on the operation of the Federal Government, the safety of its employees, and the continuity of Government functions during the COVID–19 pandemic. Such guidance shall be based on public health best practices as determined by CDC and other public health experts, and shall address, at a minimum, the following subjects as they relate to the Federal workforce:

(i) testing methodologies and protocols;

(ii) case investigation and contact tracing;

(iii) requirements of and limitations on physical distancing, including recommended occupancy and density standards;

(iv) equipment needs and requirements, including personal protective equipment;

(v) air filtration;

(vi) enhanced environmental disinfection and cleaning;

(vii) safe commuting and telework options;

(viii) enhanced technological infrastructure to support telework;

(ix) vaccine prioritization, distribution, and administration;

(x) approaches for coordinating with State, local, Tribal, and territorial health officials, as well as business, union, academic, and other community leaders;

(xi) any management infrastructure needed by agencies to implement public health guidance; and

(xii) circumstances under which exemptions might appropriately be made to agency policies in accordance with CDC guidelines, such as for mission-critical purposes.

(f) *Agency Cooperation.* The head of each agency listed in 31 U.S.C. 901(b) shall, consistent with applicable law, promptly provide the Task Force a report on COVID–19 safety protocols, safety plans, or guidance regarding the operation of the agency and the safety of its employees, and any other information that the head of the agency deems relevant to the Task Force's work.

Sec. 5. *Federal Employee Testing.* The Secretary of HHS, through the Director of CDC, shall promptly develop and submit to the COVID–19 Response Coordinator a testing plan for the Federal workforce. This plan shall be based on community transmission metrics and address the populations to be tested, testing types, frequency of testing, positive case protocols, and coordination with local public health authorities for contact tracing.

Sec. 6. *Research and Development.* The Director of the Office of Science and Technology Policy, in consultation with the Secretary of HHS (through the National Science and Technology Council), the Director of OMB, the Director of CDC, the Director of the National Institutes of Health, the Director of the National Science Foundation, and the heads of any other appropriate agencies, shall assess the availability of Federal research grants to study best practices for implementing, and innovations to better implement, effective mask-wearing and physical distancing policies, with respect to both the Federal workforce and the general public.

Sec. 7. *Scope.* (a) For purposes of this order:

(i) ''Federal employees'' and ''Federal contractors'' mean employees (including members of the Armed Forces and members of the National Guard in Federal service) and contractors (including such contractors' employees) working for the executive branch;

(ii) ''Federal buildings'' means buildings, or office space within buildings, owned, rented, or leased by the executive branch of which a substantial portion of occupants are Federal employees or Federal contractors; and

(iii) ''Federal lands'' means lands under executive branch control.

(b) The Director of OPM and the Administrator of General Services shall seek to consult, in coordination with the heads of any other relevant agencies and the COVID–19 Response Coordinator, with the Sergeants at Arms of the Senate and the House of Representatives and the Director of the Administrative Office of the United States Courts (or such other persons designated by the Majority and Minority Leaders of the Senate, the Speaker and Minority Leader of the House, or the Chief Justice of the United States, respectively), to promote mask-wearing, physical distancing, and adherence to other public health measures within the legislative and judicial branches, and shall provide requested technical assistance as needed to facilitate compliance with CDC guidelines.

Sec. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

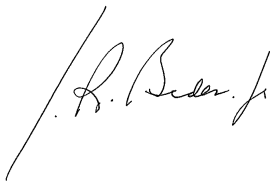
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Independent agencies are strongly encouraged to comply with the requirements of this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2021.

[FR Doc. 2021–01766
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13992 of January 20, 2021

Revocation of Certain Executive Orders Concerning Federal Regulation

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that:

Section 1. *Policy.* It is the policy of my Administration to use available tools to confront the urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID–19) pandemic, economic recovery, racial justice, and climate change. To tackle these challenges effectively, executive departments and agencies (agencies) must be equipped with the flexibility to use robust regulatory action to address national priorities. This order revokes harmful policies and directives that threaten to frustrate the Federal Government's ability to confront these problems, and empowers agencies to use appropriate regulatory tools to achieve these goals.

Sec. 2. *Revocation of Orders.* Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 13777 of February 24, 2017 (Enforcing the Regulatory Reform Agenda), Executive Order 13875 of June 14, 2019 (Evaluating and Improving the Utility of Federal Advisory Committees), Executive Order 13891 of October 9, 2019 (Promoting the Rule of Law Through Improved Agency Guidance Documents), Executive Order 13892 of October 9, 2019 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication), and Executive Order 13893 of October 10, 2019 (Increasing Government Accountability for Administrative Actions by Reinvigorating Administrative PAYGO), are hereby revoked.

Sec. 3. *Implementation.* The Director of the Office of Management and Budget and the heads of agencies shall promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing the Executive Orders identified in section 2 of this order, as appropriate and consistent with applicable law, including the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* If in any case such rescission cannot be finalized immediately, the Director and the heads of agencies shall promptly take steps to provide all available exemptions authorized by any such orders, rules, regulations, guidelines, or policies, as appropriate and consistent with applicable law. In addition, any personnel positions, committees, task forces, or other entities established pursuant to the Executive Orders identified in section 2 of this order, including the regulatory reform officer positions and regulatory reform task forces established by sections 2 and 3 of Executive Order 13777, shall be abolished, as appropriate and consistent with applicable law.

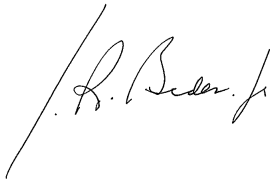
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2021.

[FR Doc. 2021–01767
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13993 of January 20, 2021

Revision of Civil Immigration Enforcement Policies and Priorities

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* Immigrants have helped strengthen America's families, communities, businesses and workforce, and economy, infusing the United States with creativity, energy, and ingenuity. The task of enforcing the immigration laws is complex and requires setting priorities to best serve the national interest. The policy of my Administration is to protect national and border security, address the humanitarian challenges at the southern border, and ensure public health and safety. We must also adhere to due process of law as we safeguard the dignity and well-being of all families and communities. My Administration will reset the policies and practices for enforcing civil immigration laws to align enforcement with these values and priorities.

Sec. 2. *Revocation.* Executive Order 13768 of January 25, 2017 (Enhancing Public Safety in the Interior of the United States), is hereby revoked. The Secretary of State, the Attorney General, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of the Office of Personnel Management, and the heads of any other relevant executive departments and agencies (agencies) shall review any agency actions developed pursuant to Executive Order 13768 and take action, including issuing revised guidance, as appropriate and consistent with applicable law, that advances the policy set forth in section 1 of this order.

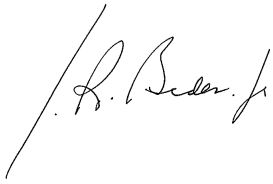
Sec. 3. *General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:*

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2021.

[FR Doc. 2021–01768
Filed 1–22–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Memorandum of January 20, 2021

Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA)

Memorandum for the Attorney General [and] the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States, it is hereby ordered as follows:

Section 1. *Policy.* In 2012, during the Obama-Biden Administration, the Secretary of Homeland Security issued a memorandum outlining how, in the exercise of prosecutorial discretion, the Department of Homeland Security should enforce the Nation's immigration laws against certain young people. This memorandum, known as the Deferred Action for Childhood Arrivals (DACA) guidance, deferred the removal of certain undocumented immigrants who were brought to the United States as children, have obeyed the law, and stayed in school or enlisted in the military. DACA and associated regulations permit eligible individuals who pass a background check to request temporary relief from removal and to apply for temporary work permits. DACA reflects a judgment that these immigrants should not be a priority for removal based on humanitarian concerns and other considerations, and that work authorization will enable them to support themselves and their families, and to contribute to our economy, while they remain.

Sec. 2. *Preserving and Fortifying DACA.* The Secretary of Homeland Security, in consultation with the Attorney General, shall take all actions he deems appropriate, consistent with applicable law, to preserve and fortify DACA.

Sec. 3. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

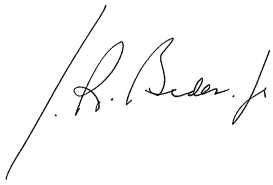
(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Homeland Security is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 20, 2021

[FR Doc. 2021–01769
Filed 1–22–21; 11:15 am]
Billing code 4410–10–P

Presidential Documents

Memorandum of January 20, 2021

Reinstating Deferred Enforced Departure for Liberians

Memorandum for the Secretary of State [and] the Secretary of Homeland Security

Since 1991, the United States has provided safe haven for Liberians who were forced to flee their country as a result of armed conflict and widespread civil strife, in part through the grant of Temporary Protected Status (TPS). The armed conflict ended in 2003, and TPS for affected Liberian nationals ended effective October 1, 2007. President Bush then deferred the enforced departure of those Liberians originally granted TPS. President Obama, in successive memoranda, extended that grant of Deferred Enforced Departure (DED) to March 31, 2018. President Trump then determined that conditions in Liberia did not warrant a further extension of DED, but that the foreign policy interests of the United States warranted affording an orderly transition period for Liberian DED beneficiaries. President Trump later extended that DED transition period through March 30, 2020.

In December 2019, the Congress enacted the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92) (NDAA), which included, as section 7611, the Liberian Refugee Immigration Fairness (LRIF) provision. The LRIF provision, with limited exceptions, makes Liberians who have been continuously present in the United States since November 20, 2014, as well as their spouses and children, eligible for adjustment of status to that of United States lawful permanent resident (LPR). The NDAA gave eligible Liberian nationals until December 20, 2020, to apply for this adjustment of status. After the enactment of the LRIF provision, President Trump further extended the DED transition period through January 10, 2021, to ensure that DED beneficiaries would continue to be eligible for employment authorization during the LRIF application period.

The LRIF application process was hampered by a slow launch, cumbersome procedures, and delays in adjudication. Recognizing these difficulties, the Congress enacted a 1-year extension to the application period in section 901 of the Consolidated Appropriations Act, 2021 (Public Law 116–260). That legislation, however, did not provide for continued employment authorization past January 10, 2021, the expiration of the most recent DED transition period.

There are compelling foreign policy reasons to reinstate DED for an additional period for those Liberians presently residing in the United States who were under a grant of DED as of January 10, 2021. Providing work authorization to these Liberians, for whom we have long authorized TPS or DED in the United States, while they initiate and complete the LRIF status-adjustment process, honors the historic close relationship between the United States and Liberia and is in the foreign policy interests of the United States. I urge all Liberian DED beneficiaries to apply promptly for adjustment of status, and I direct the Secretary of Homeland Security to review the LRIF application procedures administered by United States Citizenship and Immigration Services to ensure that they facilitate ease of application and timely adjudication.

Pursuant to my constitutional authority to conduct the foreign relations of the United States, I have determined that it is in the foreign policy interests of the United States to defer through June 30, 2022, the removal

of any Liberian national, or person without nationality who last habitually resided in Liberia, who is present in the United States and who was under a grant of DED as of January 10, 2021. I have also determined that any Liberian national, or person without nationality who last habitually resided in Liberia, who is present in the United States and who was under a grant of DED as of January 10, 2021, should have continued employment authorization through June 30, 2022.

The Secretary of Homeland Security shall promptly direct the appropriate officials to make provision, by means of a notice published in the *Federal Register*, for immediate allowance of employment authorization for those Liberians who held appropriate DED-related employment authorization documents as of January 10, 2021. The Secretary shall also provide for the prompt issuance of new or replacement documents in appropriate cases.

This grant of DED and continued employment authorization shall apply to any Liberian DED beneficiary as of January 10, 2021, but shall not apply to such persons in the following categories:

(1) Individuals who would be ineligible for TPS for the reasons provided in section 244(c)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. 1254a(c)(2)(B);

(2) Individuals who sought or seek LPR status under the LRIF provision but whose applications have been or are denied by the Secretary of Homeland Security;

(3) Individuals whose removal the Secretary of Homeland Security determines is in the interest of the United States, subject to the LRIF provision;

(4) Individuals whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;

(5) Individuals who have voluntarily returned to Liberia or their country of last habitual residence outside the United States for an aggregate period of 180 days or more, as specified in subsection (c)(2) of the LRIF provision;

(6) Individuals who were deported, excluded, or removed prior to the date of this memorandum; or

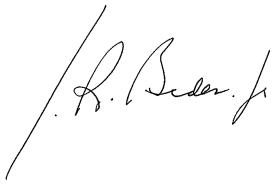
(7) Individuals who are subject to extradition.

Accordingly, I hereby direct the Secretary of Homeland Security to take the necessary steps to implement for eligible Liberians:

(1) a deferral of enforced departure from the United States through June 30, 2022, effective immediately; and

(2) authorization for employment valid through June 30, 2022.

The Secretary of Homeland Security is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 20, 2021

[FR Doc. 2021–01770
Filed 1–22–21; 11:15 am]
Billing code 4410–10–P

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H.R. 335/P.L. 117-1

To provide for an exception to a limitation against appointment of persons as Secretary of Defense within seven years of relief from active duty as a regular commissioned officer of the Armed Forces. (Jan. 22, 2021)

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